

**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
THE NATURE CONSERVANCY)	DETERMINATION
)	
_____)	Water Right Claim 81

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 February 1, 1991, GOOSE BAY FARMS timely submitted a Statement and Proof of Claim (Claim 81) 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 81 was submitted for a total of 51.4 cfs from the Williamson River, a tributary of the Upper Klamath Lake, being 31.4 cfs of water for irrigation of 2,187 acres, 5.0 cfs for livestock watering of 400 head, and 15.0 cfs for wildlife. The claimed period of use is “year round” for irrigation, livestock watering, and wildlife. The claimed priority date is October 14, 1864.
3. CATHERYN MORSE as an agent of GOOSE BAY FARMS signed the Statement and Proof of Claim for Claim 81 attesting that the information contained in the claim is true.
4. On August 31, 1998, Claim 81 was amended to (1) increase the rate for irrigation claimed from 31.4 cfs to 54.85 cfs, and (2) increase the originally claimed acreage for irrigation from 2187 acres to 2193.8 acres.
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 portion of the claim for livestock watering and irrigation was approved, but for a smaller quantity of water than claimed, and a shorter season of use than claimed.
6. On November 23, 1999, Claim 81 was subsequently transferred to THE NATURE CONSERVANCY (Claimant). See BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M99, PAGE 46418 (Nov 23, 1999).

7. On May 8, 2000, the Claimant timely filed Contest 2800 to the Preliminary Evaluation of Claim 81.
8. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3471: 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.¹, 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 Pritchard², Don Vincent³, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
9. On May 8, 2000, the United States of America timely filed Contest 3733 to the Claim and/or Preliminary Evaluation of Claim 81.
10. On May 8, 2000, the Klamath Tribes timely filed Contest 4127 to the Claim and/or Preliminary Evaluation of Claim 81.
11. On May 8, 2000, Thomas William Mallams timely filed Contest 4949 to the Claim and/or Preliminary Evaluation of Claim 81.
12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 206.
13. On April 28, 2006, Thomas William Mallams’s Contest 4949 was dismissed. *See* ORDER GRANTING THE NATURE CONSERVANCY’S MOTION FOR SUMMARY DETERMINATION AND DISMISSING CONTEST NO. 4949 (April 28, 2006).
14. On September 26, 2006, the Klamath Project Water Users withdrew Contest 3471 by stipulation. *See* STIPULATED WITHDRAWAL OF CONTEST NO. 3471 (Sept. 26, 2006).
15. On September 26, 2006, The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2800, 3733, AND 4127 (Settlement Agreement), thereby resolving all remaining contests to Claim 81.
16. On September 27, 2006, the Adjudicator withdrew Case 206 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3471 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3471 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3471 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception of the following statement made in Paragraph B.1.c: “The Parties and OWRD understand and agree that irrigation for the purposes hereof includes the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants, including the application of water to crops or plants growing or to be grown in marshlands or wetlands, with or without any commercial harvest or grazing of such crops or plants.” Irrigation authorized under this claim is subject to the definition of irrigation use applied by the Ninth Circuit to *Walton* claims: irrigation under a *Walton* right is that which is “essential to agricultural needs.” See *United States v. Adair*, 723 F.2d 1394, 1415 (9th Cir. 1983).
2. Based on the file and record herein, IT IS ORDERED that Claim 81 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 81
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
WILLIAMSON RIVER DELTA PRESERVE MAP – CLAIM 81 (Oct. 2, 2006)

CLAIMANT: THE NATURE CONSERVANCY
821 SE 14TH ST
PORTLAND OR 97214-2537

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
IRRIGATION OF 308.6 ACRES, BEING 56.1 ACRES FROM POD B AND 252.2 ACRES FROM POD D.

RATE OF USE:
7.71 CUBIC FEET PER SECOND (CFS) FOR IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING 1.4 CFS FROM ‘POD B’ AND 6.31 CFS FROM POD D.

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:

Use	Period
Irrigation	March 1 - October 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

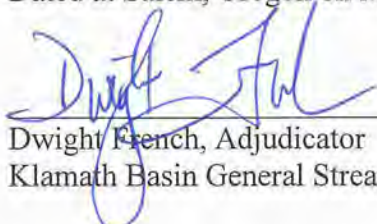
POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD B	36 S	7.5 E	WM	1	SW NW	1460 FEET SOUTH AND 10,000 FEET WEST FROM SE CORNER, SECTION 31, T 35 S, R 7.0 E, W.M.
POD D	35 S	7.0 E	WM	31	SE NW	2760 FEET NORTH AND 3970 FEET WEST FROM SE CORNER, SECTION 31, T 35 S, R 7.0 E, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	7 E	WM	5	SW NW	12	5.5	POD B
36 S	7 E	WM	5	SW NW	13	3.5	
36 S	7 E	WM	5	NW SW	20	0.1	
36 S	7 E	WM	6	SW NE		11.5	
36 S	7 E	WM	6	SE NE		35.4	
36 S	7 E	WM	6	NE SE		0.1	
35 S	7 E	WM	31	SW NE	12	7.0	POD D
35 S	7 E	WM	31	SW NE	19	16.0	
35 S	7 E	WM	31	SE NE	20	0.8	
35 S	7 E	WM	31	SW NW	16	0.2	
35 S	7 E	WM	31	SE NW	18	1.2	
35 S	7 E	WM	31	NE SW	23	18.2	
35 S	7 E	WM	31	NE SW	26	14.4	
35 S	7 E	WM	31	NW SW	24	0.8	
35 S	7 E	WM	31	SE SW	31	10.2	
35 S	7 E	WM	31	SE SW	36	6.2	
35 S	7 E	WM	31	NE SE	28	5.1	
35 S	7 E	WM	31	NE SE	21	2.9	
35 S	7 E	WM	31	NW SE	22	20.0	
35 S	7 E	WM	31	NW SE	27	20.0	
35 S	7 E	WM	31	SW SE	37	19.3	
35 S	7 E	WM	31	SW SE	30	20.1	
35 S	7 E	WM	31	SE SE	29	7.4	
35 S	7 E	WM	31	SE SE	38	9.3	
36 S	7 E	WM	5	NW NW	5	0.8	
36 S	7 E	WM	6	NE NE		32.1	
36 S	7 E	WM	6	NW NE		37.0	
36 S	7 E	WM	6	NE NW		3.5	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication