

**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 91

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, TULANA FARMS timely submitted a Statement and Proof of Claim (Claim 91) 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 91 was submitted for a total of 100.47 cfs from the Williamson River, a tributary of the Upper Klamath Lake, being 62.47 cfs of water for irrigation of 4351.6 acres, 8.0 cfs for livestock watering of 1500 head, and 30.0 cfs for wildlife. The claimed period of use is "March 15 to November 1" for irrigation, and "year round" for livestock watering and wildlife. The claimed priority date is October 14, 1864.
3. R. L. GARRISON, OWNER OF TULANA FARMS, signed the Statement and Proof of Claim for Claim 91 attesting that the information contained in the claim is true.
4. On July 19, 1996, Claim 91 was subsequently transferred to THE NATURE CONSERVANCY (Claimant) from R. LEONARD AND LINDA B GARRISON. *See* SPECIAL WARRANTY DEED, COUNTY OF KLAMATH, VOL. M96, PAGE 21767 (July 19, 1996).
5. On August 21, 1998, Claim 91 was amended to (1) lengthen the claimed irrigation season from March 15 - November 1 to March 1 through December 31, (2) increase the total cfs claimed from 100.47 cfs to 108.36 cfs, (3) add wetlands as a use for water being claimed, and (4) decrease the originally claimed acreage for irrigation from 4351.6 acres to 4334.3 acres.

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 portion of the claim for irrigation was approved, but for a smaller quantity of water than claimed and a shorter season of use than claimed. Livestock watering was limited to incidental livestock watering only.
7. On May 8, 2000, the Claimant timely filed Contest 2801 to the Preliminary Evaluation of Claim 91.
8. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3475: 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 3735 to the Claim and/or Preliminary Evaluation of Claim 91.
10. On May 8, 2000, the Klamath Tribes timely filed Contest 4130 to the Claim and/or Preliminary Evaluation of Claim 91.
11. On May 8, 2000, Thomas William Mallams timely filed Contest 4950 to the Claim and/or Preliminary Evaluation of Claim 91.
12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 210.
13. On April 28, 2006, Thomas William Mallams’s Contest 4950 was dismissed. *See* ORDER GRANTING THE NATURE CONSERVANCY’S MOTION FOR SUMMARY DETERMINATION AND DISMISSING CONTEST NO. 4950 (April 28, 2006).
14. On September 26, 2006, the Klamath Project Water Users withdrew Contest 3475 by stipulation. *See* STIPULATED WITHDRAWAL OF CONTEST NO. 3475 (Sept. 26, 2006).

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3475 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3475 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3475 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On September 26, 2006, The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2801, 3735, AND 4130 (Settlement Agreement), thereby resolving all remaining contests to Claim 91.
16. On September 27, 2006, the Adjudicator withdrew Case 210 from the Office of Administrative Hearings.

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 91 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 91
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
WILLIAMSON RIVER DELTA PRESERVE MAP – CLAIM 91 (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 630.7 ACRES.

RATE OF USE:
15.77 CUBIC FEET PER SECOND (CFS) FROM ‘POD C’ FOR IRRIGATION, 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 15 - October 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD C	35 S	7.5 E	WM	36	SE NE	2820 FEET NORTH AND 5340 FEET WEST FROM SE CORNER, SECTION 31, T 35 S, R 7.0 E, W.M.

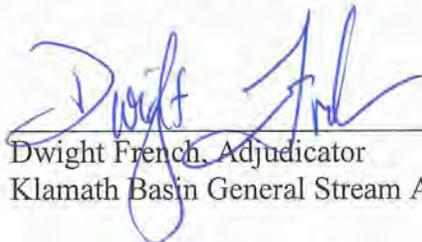
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM 'POD C'						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	19	SW SW	28	16.5
35 S	7 E	WM	19	SE SW	29	16.8
35 S	7 E	WM	19	SW SE	30	3.5
35 S	7 E	WM	30	NW NE	3	3.9
35 S	7 E	WM	30	NW NE	8	3.9
35 S	7 E	WM	30	SW NE	13	0.5
35 S	7 E	WM	30	SW NE	18	0.4
35 S	7 E	WM	30	NE NW	7	19.3
35 S	7 E	WM	30	NE NW	4	18.3
35 S	7 E	WM	30	NW NW	6	17.8
35 S	7 E	WM	30	NW NW	5	17.6
35 S	7 E	WM	30	SW NW	16	17.9
35 S	7 E	WM	30	SW NW	15	17.9
35 S	7 E	WM	30	SE NW	17	19.1
35 S	7 E	WM	30	SE NW	14	19.1
35 S	7 E	WM	30	NE SW	27	19.7
35 S	7 E	WM	30	NE SW	24	19.7
35 S	7 E	WM	30	NW SW	26	19.3
35 S	7 E	WM	30	NW SW	25	19.2
35 S	7 E	WM	30	SW SW	36	19.3
35 S	7 E	WM	30	SW SW	35	19.4
35 S	7 E	WM	30	SE SW	37	12.0
35 S	7 E	WM	30	SE SW	34	17.6
35 S	7 E	WM	31	NE NW	4	0.1
35 S	7 E	WM	31	NW NW	5	17.1
35 S	7.5 E	WM	24	SW SE	2	3.8
35 S	7.5 E	WM	24	SE SE	1	12.7
35 S	7.5 E	WM	25	NE NE		36.7
35 S	7.5 E	WM	25	NW NE	10	4.2
35 S	7.5 E	WM	25	NW NE	1	8.5
35 S	7.5 E	WM	25	SW NE		21.6
35 S	7.5 E	WM	25	SE NE		38.0

IRRIGATION FROM 'POD C'						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7.5 E	WM	25	NE SE		39.4
35 S	7.5 E	WM	25	NW SE		23.9
35 S	7.5 E	WM	25	SW SE		24.3
35 S	7.5 E	WM	25	SE SE		38.9
35 S	7.5 E	WM	36	NE NE		15.1
35 S	7.5 E	WM	36	NW NE	8	0.1
35 S	7.5 E	WM	36	NW NE	3	7.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

PARTIAL ORDER OF DETERMINATION

CLAIM 91
Page 5 of 5

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