

**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
SILVERBOW RANCH, LLC)	DETERMINATION
)	
_____)	Water Right Claim 93

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 3, 1991, RALEIGH AND DIANE L. WIRTH, TRUSTEES OF THE WIRTH FAMILY TRUST timely submitted a Statement and Proof of Claim (Claim 93) 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 93 was submitted for a total of 0.892 cfs of water from the Williamson River, a tributary of Upper Klamath Lake for irrigation of 13.6 acres. The claimed period of use is April 15 to October 15. The claimed priority date is "1864."
3. RALEIGH WIRTH and DIANE L. WIRTH signed Claim 93 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 93 was ultimately transferred to SILVERBOW RANCH, LLC (Claimant). *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 9537 (April 1, 1997) (Claim # 93, Page 30).
5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3476: 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

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3476 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

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.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 263.
7. On February 13, 2003, the Claimant, OWRD, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 3474 AND 3476 (Settlement Agreement) thereby resolving the only contest to Claim 93.
8. On February 21, 2003, the Adjudicator withdrew Case 263 from the Office of Administrative Hearings.
9. OWRD finds that the irrigation season, March 1 to October 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed an irrigation season April 15 to October 15.
10. OWRD finds that the place of use locations referenced in the Settlement Agreement are within certain Government Lots as listed below:
 - a. 4.0 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ is within Government Lot 7
 - b. 9.6 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ is within Government Lot 15

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. The irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 9, above; the irrigation season recognized herein is consistent the Claimant's original claim.
 - b. Government Lots are assigned as described in Finding 10, above.
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. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

² Berlva Pritchard voluntarily withdrew from Contest 3476 on June 24, 2002. See NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3476 on November 29, 2000. See NOTICE OF WITHDRAWAL OF CLAIMANTS.

4. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.
5. Based on the file and record herein, IT IS ORDERED that Claim 93 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 93
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 35 S, R 7 E (CLAIM # 93, PAGE 28);
CLAIM # 93 PAGE 67

CLAIMANT: SILVERBOW RANCH, LLC
250 NW FRANKLIN AVE SUITE 204
BEND, OR 97701

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

PURPOSE OR USE: IRRIGATION OF 13.6 ACRES.

RATE OF USE:
0.34 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 15 TO OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

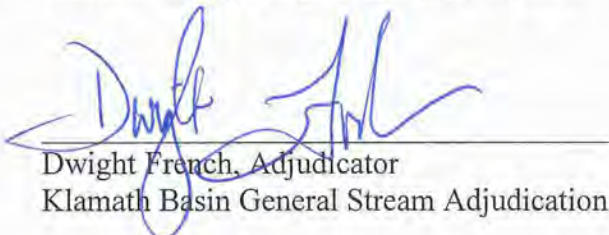
Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	21	SE NW	19	916 FEET SOUTH AND 12 FEET EAST FROM NW CORNER, SENW, SECTION 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	21	NE NW	7	4.0
35 S	7 E	WM	21	SE NW	15	9.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication