

**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     |
| DALE MATHER AND               | ) | DETERMINATION        |
| SUZI MATHER                   | ) |                      |
| _____                         | ) |                      |
|                               | ) | Water Right Claim 94 |

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, BRUCE AND PATRICIA BOYD timely submitted a Statement and Proof of Claim (Claim 94) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as 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 94 was submitted for a total of 0.2 cubic feet per second (cfs) of water from the Sprague River, a tributary of the Williamson River, for livestock watering of 10 head and for irrigation of 14.0 acres with a season of use "April 1<sup>st</sup> to September 30." The claim listed the date of initiation of the water right as "November 17, 1938" with a basis of the right as "Federal Reservation."
3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit B," which contains, among other documents, a copy of a patent issued by the Bureau of Indian Affairs to Evaline Cheraldo for Allotment 1547 which is located in the S ½ NW ¼, Section 11, Township 35 South, Range 9 East, W.M. (Claim # 94, Page 008).
4. The original claimants did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.
5. PATRICIA A. BOYD signed the Statement and Proof of Claim for Claim 94 attesting that the information contained in the claim is true.
6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 94 (Claim # 94, WIP, Page 00013).

The report also includes the statement, “She [Sandy Jackson, conservator for the heirs of the estate of Evaline Lang and Rudolf Cheraldo] said both Cheraldos were Klamath Tribal members and had lived on the property since it was allotted to them in the 1930’s. . . . She [also] said Rudolf Cheraldo irrigated and farmed the land, including growing oats, since the 1930’s.”

7. A November 3, 1998 letter, signed by the original claimant Patricia Boyd, verified the claimed use of water is (only) for incidental livestock use by stating: “Irrigation was primary, no diversion to livestock occurred, they only grazed the land after harvest . . .” (Claim # 94, Page 00029).
8. The property appurtenant to Claim 94 was subsequently acquired by DALE AND SUZI MATHER (Claimants) (Claim # 94, Page 00029).
9. 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 with a priority date of October 14, 1864, and with a longer season of use than claimed.
10. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 94.
11. Based on the totality of the information submitted with the Statement and Proof of Claim (Claim 94), OWRD finds the intent of the original applicant was to have requested a priority date of October 14, 1864. This is confirmed in a November 3, 1998 letter to OWRD from the original claimant wherein the statement was made that “the basis of the claim is the Reservation and treaty date, so 10-14-1864 would be correct.” (Claim # 94, Page 00029).
12. Based on the sworn statements in Claim 94, 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.

## **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. 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 94 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 94**

**CLAIM MAP REFERENCE:** OWRD INVESTIGATION MAP – T 35 S, R 9 E

**CLAIMANT:** DALE MATHER AND SUZI MATHER  
13974 SPRAGUE RIVER RD  
CHILOQUIN OR 97624

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

**PURPOSE or USE:**

IRRIGATION OF 14.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 10 HEAD.

**RATE OF USE:**

0.2 CUBIC FEET 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:**

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

**PERIOD OF ALLOWED USE:** APRIL 1 - SEPTEMBER 30

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

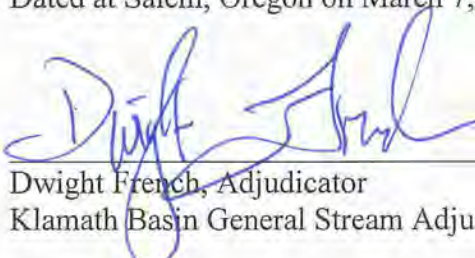
| Twp  | Rng | Mer | Sec | Q-Q   |
|------|-----|-----|-----|-------|
| 35 S | 9 E | WM  | 11  | SW NW |

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| Irrigation with Incidental Livestock Watering |     |     |     |       |       |
|---|-----|-----|-----|-------|-------|
| Twp   | Rng | Mer | Sec | Q-Q   | Acres |
| 35 S  | 9 E | WM  | 11  | SW NW | 14.0  |

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication