

**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
MARVIN DEAN WALKER)	DETERMINATION
)	
_____)	Water Right Claim 102

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 30, 1991, MARVIN DEAN WALKER (Claimant) timely submitted a Statement and Proof of Claim (Claim 102) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication as follows:
 - a. 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; and
 - b. as a non-Indian successor to unallotted Klamath Indian Reservation lands claiming a vested Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707, pursuant to the Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. (Klamath Termination Act claim).
2. Claim 102 was submitted for a total of 7.2 cfs of water, being 5.2 cfs from Snake Creek, a tributary of the Sycan River, and 2.0 cfs from the Sycan River, a tributary of the Sprague River, for irrigation of approximately 280 acres. The claimed period of use is April through October. The claimed priority date is "1864."
3. MARVIN DEAN WALKER signed Claim 102 attesting that the information contained in the claim is true.
4. 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 for subirrigation and irrigation, but for a smaller quantity of water and fewer acres than claimed, and with a longer season of use than claimed on a portion of the property.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3482: 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.
6. On May 8, 2000, the United States of America timely filed Contest 3808 to the Claim and/or Preliminary Evaluation of Claim 102.
7. On May 8, 2000, the Klamath Tribes timely filed Contest 4136 to the Claim and/or Preliminary Evaluation of Claim 102.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 216.
9. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3482. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3482 (Apr. 8, 2004).
10. On April 22, 2005, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 102.
11. On April 26, 2005, the Adjudicator withdrew Case 216 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.
2. Portions of the claimed place of use are subject to natural subirrigation from Snake Creek, tributary to the Sycan River. The use of water by natural subirrigation is a privilege only, and does not constitute a water right. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3482 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3482 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3482 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

may not be transferred to any other property, and may not be altered by the use of any physical means to modify the manner in which natural subirrigation occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural subirrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. This privilege as described herein does not constitute a water right; as such, OWRD will not issue a water right certificate for this privilege described in this paragraph. The stipulated place of use for acceptance of natural subirrigation is located as follows:

NATURAL SUBIRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	12 E	WM	34	NE NE	20.0
35 S	12 E	WM	34	SE NE	34.3
35 S	12 E	WM	35	NW NW	4.2
35 S	12 E	WM	35	SW NW	1.0

3. Based on the file and record herein, IT IS ORDERED that Claim 102 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 102
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 102, PAGE 39

CLAIMANT: MARVIN DEAN WALKER
PO BOX 190
BEATTY OR 97621

SOURCE OF WATER:
The SYCAN RIVER, tributary to the SPRAGUE RIVER, and
SNAKE CREEK, tributary to the SYCAN RIVER

PURPOSE OR USE:
IRRIGATION OF 143.7 ACRES, BEING 21.9 ACRES FROM THE SYCAN RIVER, AND
121.8 ACRES FROM SNAKE CREEK.

RATE OF USE:
3.59 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION,
BEING 0.55 CFS FROM THE SYCAN RIVER AND 3.04 FROM SNAKE CREEK.

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: APRIL 1 – OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

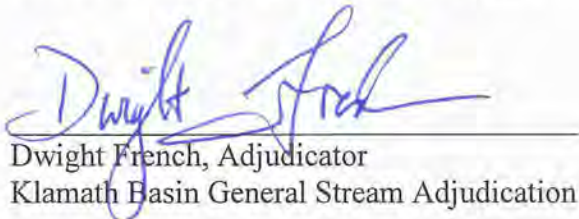
Pod Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Sycan River	35 S	12 E	WM	34	SE SW	5 FEET SOUTH AND 45 FEET EAST FROM NW CORNER, SESW, SECTION 34
Snake Creek	35 S	12 E	WM	34	SW SE	530 FEET NORTH AND 2110 FEET WEST FROM SE CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	12 E	WM	34	NE SW	22.3	Snake Creek
35 S	12 E	WM	34	SE SW	17.2	Sycan River
35 S	12 E	WM	34	NW SE	36.4	Snake Creek
35 S	12 E	WM	34	SW SE	4.7	Sycan River
35 S	12 E	WM	34	SW SE	25.6	Snake Creek
35 S	12 E	WM	34	SE SE	37.5	Snake Creek

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication