

**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
RICHARD H. SMITH AND)	DETERMINATION
VICTOR S. SMITH)	
_____)	
)	Water Right Claim 115

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 29, 1991, LULA M. SMITH timely submitted a Statement and Proof of Claim (Claim 115) 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 115 was submitted for a total of 5.71 cfs of water from Whiskey Creek, a tributary of the Sprague River, being 4.71 cfs for irrigation of 188.1 acres and 1.0 cfs for livestock watering of "150 pair or 225 yearlings." The claimed period of use is year-round for livestock watering, and April 1 to October 1 for irrigation. The claimed priority date is "1864."
3. LULA M. SMITH signed Claim 115 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, but for a smaller quantity of water and fewer acres than claimed, and with a longer irrigation season than claimed.
5. The property appurtenant to Claim 115 was transferred to RICHARD H. SMITH AND VICTOR S. SMITH (Claimants) from LULA M. SMITH. *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M00, PAGE 4147 (Feb.1, 2000) (Claim # 115, Page 59).
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3491: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 266.
8. On March 6, 2003, the Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST 3491 (Settlement Agreement) thereby resolving the only contest to Claim 115.
9. On March 10, 2003, the Adjudicator withdrew Case 266 from the Office of Administrative Hearings.
10. Based on the place of use listing for irrigation in Paragraph B.1.g in the Settlement Agreement, and OWRD's Investigation Map (T 36 S, R 11 E, W.M.), OWRD finds that the irrigation of "179.5" acres listed in Paragraph B.1.c is incorrect; the correct number of irrigated acres is 179.6.
11. OWRD finds that the season of use for irrigation, 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 a season of use "April 1 – October 1."

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. a scrivener's error in the number of irrigated acres as described in Finding 10, above; the total number of irrigated acres is corrected to 179.6 acres;
 - b. the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 11, above; the season of use for livestock watering recognized herein is consistent the Claimant's original claim.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3491 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

² Berlva Pritchard voluntarily withdrew from Contest 3491 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3491 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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.
4. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
5. 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 115 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 115
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 11 E

CLAIMANT: RICHARD H. SMITH
VICTOR S. SMITH
11725 HAZEL GREEN RD NE
SILVERTON, OR 97381

SOURCE OF WATER: WHISKEY CREEK, tributary to the SPRAGUE RIVER

PURPOSE OR USE:
IRRIGATION OF 179.6 ACRES; LIVESTOCK WATERING OF 300 HEAD.

RATE OF USE:
4.4956 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

4.49 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.0056 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 3600 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE

FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

Use	Period
Irrigation	April 1 - October 1
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

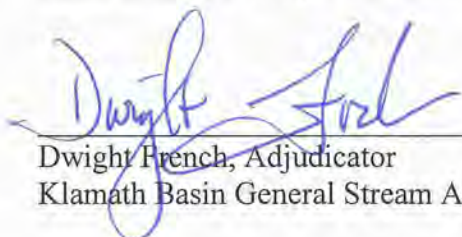
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	11 E	WM	13	NW SE	18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	11 E	WM	12	NW SW	21	1.6
36 S	11 E	WM	12	SW SW	28	15.9
36 S	11 E	WM	12	SW SW	29	16.6
36 S	11 E	WM	12	SE SW	27	9.7
36 S	11 E	WM	12	SE SW	30	15.5
36 S	11 E	WM	13	NW NE	2	7.8
36 S	11 E	WM	13	NW NE	7	16.9
36 S	11 E	WM	13	SW NE	10	13.7
36 S	11 E	WM	13	SW NE	15	10.5
36 S	11 E	WM	13	NE NW	3	19.8
36 S	11 E	WM	13	NE NW	6	20.0
36 S	11 E	WM	13	NW NW	4	9.0
36 S	11 E	WM	13	NW NW	5	5.5
36 S	11 E	WM	13	SW NW	12	2.0
36 S	11 E	WM	13	SE NW	11	15.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication