

**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
BRUCE S. TOPHAM	)	DETERMINATION
	)	
_____	)	Water Right Claim 117

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 December 5, 1990, BRUCE S. TOPHAM (Claimant) timely submitted a Statement and Proof of Claim (Claim 117) 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 117 was submitted for a total of 6.69 cfs of water from Whiskey Creek and an Unnamed Spring, tributaries of the Sprague River, being .01 cfs for domestic use, 6.66 cfs for irrigation of 229.5 acres, and 0.02 cfs for livestock watering of 600 head. The claimed period of use is year-round for domestic use and livestock watering, and May 1 through October 15 for irrigation. The claimed priority date is October 14, 1864.
3. BRUCE S. TOPHAM signed Claim 117 attesting that the information contained in the claim is true.
4. On February 1, 1991, Claim 117 was amended by payment of additional filing fees to increase the number of acres claimed.
5. 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 all claimed uses, but for fewer acres than claimed, for a smaller quantity of water for irrigation and livestock watering than claimed and with a longer irrigation season than claimed.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3493: 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.<sup>1</sup>, 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 Pritchard<sup>2</sup>, Don Vincent<sup>3</sup>, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. On May 8, 2000, the United States of America timely filed Contest 3760 to the Claim and Preliminary Evaluation of Claim 117.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4147 to the Claim and Preliminary Evaluation of Claim 117.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 227.
10. On April 1, 2004, the Klamath Project Water Users withdrew Contest 3493. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3493 (Apr. 1, 2004).
11. On May 28, 2004, 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 117.
12. On June 14, 2004, the Adjudicator withdrew Case 227 from the Office of Administrative Hearings.
13. Based on OWRD's Investigation Map (T 36 S, R 11 E, W.M.), OWRD finds that the acreages listed in the Settlement Agreement within Section 13, Township 36 South, Range 11 East, W.M. can be more precisely described as certain acreages within certain Government Lots, as listed below:
  - a. 26.6 acres listed within the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , is more precisely described as 6.9 acres within Government Lot 27, and 19.7 acres within Government Lot 30;
  - b. 22.9 acres listed within the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , is more precisely described as 12.3 acres within Government Lot 18, and 10.6 acres within Government Lot 23; and
  - c. 29.6 acres listed within the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , is more precisely described as 11.1 acres within Government Lot 26, and 18.5 acres within Government Lot 31;

---

<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3493 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3493 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3493 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

- d. 32.4 acres listed within the SE¼ SE¼, is more precisely described as 15.6 acres within Government Lot 25, and 16.8 acres within Government Lot 32.
14. Based on OWRD's Investigation Map (T 36 S, R 11 E, W.M.), OWRD finds that the points of diversion on Whiskey Creek referenced in the Settlement Agreement are within certain Government Lots as listed below:
    - a. the point of diversion within the NW¼ SE¼ is within Government Lot 18, and
    - b. the point of diversion within the SE ¼ SE¼ is within Government Lot 32.

## **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, with the exception that Government Lots are assigned as described in Findings 13 and 14, 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. 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.
4. Because there is no evidence on the record to the contrary, 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 117 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 117**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**  
OWRD INVESTIGATION MAP – T36 S, R 11 E;  
CLAIM # 117 SETTLEMENT MAP (May 28, 2004) (WIP FILE, Page 32)

**CLAIMANT:** BRUCE S. TOPHAM  
35133 SPRAGUE RIVER RD  
SPRAGUE RIVER, OR 97639

**SOURCES OF WATER:**  
An UNNAMED SPRING, tributary to WHISKEY CREEK, and  
WHISKEY CREEK, tributary to the SPRAGUE RIVER

**PURPOSE OR USE:**

DOMESTIC FOR ONE HOUSEHOLD FROM AN UNNAMED SPRING (POD 1);  
IRRIGATION OF 225.3 ACRES, AND LIVESTOCK WATERING OF 600 HEAD FROM  
WHISKEY CREEK (POD 2 AND POD 3).

**RATE OF USE:**

5.651 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:  
  
0.01 CFS FROM AN UNNAMED SPRING (POD 1) FOR DOMESTIC USE MEASURED AT  
THE POINT OF DIVERSION;  
  
5.63 CFS FROM WHISKEY CREEK (POD 2 AND POD 3) FOR IRRIGATION MEASURED  
AT THE POINTS OF DIVERSION; AND  
  
0.011 CFS FROM WHISKEY CREEK (POD 2 AND POD 3) INCLUDING ITS DITCHES FOR  
LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 7200  
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:**

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

**PERIOD OF ALLOWED USE:**

Use	Period
Domestic	January 1 - December 31
Irrigation	May 1 - October 15
Livestock Watering	January 1 - December 31

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

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	Unnamed Spring	36 S	11 E	WM	13	SE SE	32	40 FEET NORTH AND 275 FEET WEST FROM SE CORNER, SECTION 13
POD 2	Whiskey Creek	36 S	11 E	WM	13	NW SE	18	2080 FEET NORTH AND 930 FEET EAST FROM S 1/4 CORNER, SECTION 13
POD 3	Whiskey Creek	36 S	11 E	WM	13	SE SE	32	180 FEET NORTH AND 2340 FEET EAST FROM S 1/4 CORNER, SECTION 13

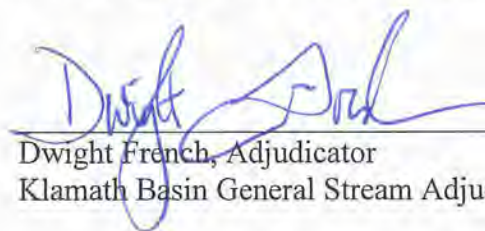
THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC FROM POD 1				
Twp	Rng	Mer	Sec	Q-Q
36 S	11 E	WM	24	NE NE

IRRIGATION and LIVESTOCK WATERING FROM WHISKEY CREEK							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	11 E	WM	13	SE SW	27	6.9	POD 2 AND POD 3
36 S	11 E	WM	13	SE SW	30	19.7	
36 S	11 E	WM	13	NW SE	18	12.3	
36 S	11 E	WM	13	NW SE	23	10.6	
36 S	11 E	WM	13	SW SE	26	11.1	
36 S	11 E	WM	13	SW SE	31	18.5	
36 S	11 E	WM	13	SE SE	25	15.6	
36 S	11 E	WM	13	SE SE	32	16.8	
36 S	11 E	WM	24	NE NE		4.00	
36 S	11 E	WM	24	NW NE		39.10	
36 S	11 E	WM	24	SW NE		23.60	
36 S	11 E	WM	24	SE NE		17.00	
36 S	11 E	WM	24	NE NW		28.80	
36 S	11 E	WM	24	SE NW		1.30	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 \_\_\_\_\_  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication