

**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	)	CORRECTED PARTIAL ORDER OF
CON J. FLYNN, NORA P. FLYNN,	)	DETERMINATION
JOHN C. FLYNN, AND	)	
THE FLYNN BROTHERS	)	
_____	)	Water Right Claim 121

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 6, 1990, CON J. FLYNN, NORA P. FLYNN, AND JOHN C. FLYNN, (ON BEHALF OF THEMSELVES AND THE FLYNN BROTHERS) (Claimants) timely submitted a Statement and Proof of Claim (Claim 121) 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 121 was submitted for a total of 2.64 cfs of water from a spring at the head of Spring Creek, and Brown Creek, tributaries of the Sprague River, for irrigation of 105.6 acres. The claimed period of use is March 15 through October 15. The claimed priority date is "1864."
3. CON J. FLYNN, NORA P. FLYNN, and JOHN C. FLYNN signed Claim 121 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 denied because the required elements for a Walton right were not established.
5. On May 3, 2000, the Claimants timely filed Contest 1690 to the Preliminary Evaluation of Claim 121.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3497: Klamath Irrigation District, Klamath

Drainage District, Tulalake 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 3764 to the Claim and Preliminary Evaluation of Claim 121.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4151 to the Claim and Preliminary Evaluation of Claim 121.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 230.
10. On January 26, 2005, the Klamath Tribes withdrew Contest 4151. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 26, 2005).
11. On November 21, 2005 the United States of America filed an amendment to Contest 3764. *See* UNITED STATES' CONTEST AMENDMENT (Nov. 21, 2005).
12. On May 11, 2006, the Claimants, OWRD, the United States of America, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 121.
13. On May 15, 2006, the Adjudicator withdrew Case 230 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
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.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3497 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3497 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3497 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Based on the file and record herein, IT IS ORDERED that Claim 121 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 121**  
**FOR A VESTED WATER RIGHT**

**CLAIM MAP REFERENCE:** CLAIM # 121 SETTLEMENT MAP (May 4, 2006)

**CLAIMANT:** CON J. FLYNN  
NORA P. FLYNN  
JOHN C. FLYNN  
THE FLYNN BROTHERS  
421 SOUTH G  
LAKEVIEW OR 97630

**SOURCE OF WATER:**  
A SPRING VIA SPRING CREEK AND/OR BROWN CREEK, tributary to the SPRAGUE RIVER

**PURPOSE OR USE:** IRRIGATION OF 86.2 ACRES.

**RATE OF USE:**  
NOT TO EXCEED 2.16 CUBIC FEET PER SECOND (CFS) FROM ANY COMBINATION OF WATER FROM SPRING CREEK POD 1 AND/OR BROWN CREEK POD 2, MEASURED AT THE POINTS 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:**  
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

**PERIOD OF ALLOWED USE:** MARCH 15 - OCTOBER 15

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

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


POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Spring Creek POD 1	36 S	12 E	WM	23	SE NE	9	1742 FEET SOUTH AND 316 FEET WEST FROM NE CORNER, SECTION 23
Brown Creek POD 2	36 S	12 E	WM	23	SW NE	10	1632 FEET SOUTH AND 2205 FEET WEST FROM NE CORNER, SECTION 23

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

IRRIGATION FROM POD 1							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	14	NE SE	17	12.7	Spring Creek POD 1 and Brown Creek POD 2
36 S	12 E	WM	14	NE SE	24	14.0	
36 S	12 E	WM	14	NW SE	18	12.3	
36 S	12 E	WM	14	NW SE	23	3.7	
36 S	12 E	WM	14	SW SE	26	1.4	
36 S	12 E	WM	14	SW SE	31	4.8	
36 S	12 E	WM	14	SE SE	25	19.3	
36 S	12 E	WM	14	SE SE	32	18.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication