

**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
THE FLYNN BROTHERS)	DETERMINATION
_____)	
)	Water Right Claim 122

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 November 14, 1990, THE FLYNN BROTHERS (Claimants) timely submitted a Statement and Proof of Claim (Claim 122) 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 122 was submitted for a total of 14.47 cfs of water, being 5.77 cfs from a Brown Creek, a tributary of the Sprague River, and 8.7 cfs from an Unnamed Stream, a tributary of Brown Creek, for irrigation of 553.2 acres. The claimed period of use is March 15 through October 15. The claimed priority date is "1864."
3. CON J. FLYNN on behalf of THE FLYNN BROTHERS signed Claim 122 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 1689 to the Preliminary Evaluation of Claim 122.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3498: 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. On May 8, 2000, the United States of America timely filed Contest 3765 to the Claim and Preliminary Evaluation of Claim 122.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4152 to the Claim and Preliminary Evaluation of Claim 122.
9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2843 to the Claim and/or Preliminary Evaluation of Claim 122.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 230.
11. On May 20, 2003, WaterWatch's Contest 2843 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
12. On January 26, 2005, the Klamath Tribes withdrew Contest 4151. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 26, 2005).
13. 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 122.
14. On May 15, 2006, the Adjudicator withdrew Case 230 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3498 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3498 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3498 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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.
3. Based on the file and record herein, IT IS ORDERED that Claim 122 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 122
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 120 SETTLEMENT MAP (May 4, 2006)

CLAIMANT: THE FLYNN BROTHERS
421 SOUTH G ST
LAKEVIEW OR 97630

SOURCE OF WATER:
BROWN CREEK, tributary to SPRAGUE RIVER, and
An Unnamed Stream, tributary to BROWN CREEK

PURPOSE OR USE: IRRIGATION OF 331.5 ACRES.

RATE OF USE:
8.29 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION,
BEING 5.68 CFS FROM POD 1 AND 2.61 CFS FROM POD 2.

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 - AUGUST 1

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	Brown Creek	36 S	12 E	WM	36	SW NW		1780 FEET SOUTH AND 150 FEET EAST FROM NW CORNER, SECTION 36
POD 2	Unnamed Stream	37 S	12 E	WM	3	NE NE	1	230 FEET SOUTH AND 450 FEET WEST FROM NE CORNER, SECTION 3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
36 S	12 E	WM	26	NE SW	21.5	POD 1
36 S	12 E	WM	26	NW SW	5.2	
36 S	12 E	WM	26	SW SW	5.9	
36 S	12 E	WM	26	SE SW	38.2	
36 S	12 E	WM	26	NW SE	6.2	
36 S	12 E	WM	26	SW SE	40.1	
36 S	12 E	WM	26	SE SE	5.8	
36 S	12 E	WM	35	NE NE	32.7	
36 S	12 E	WM	35	NW NE	38.5	
36 S	12 E	WM	35	SW NE	0.2	
36 S	12 E	WM	35	SE NE	2.7	
36 S	12 E	WM	35	NE NW	27.1	
36 S	12 E	WM	35	NW NW	1.6	
36 S	12 E	WM	36	NW NW	1.4	
36 S	12 E	WM	26	NW SW	1.5	POD 2
36 S	12 E	WM	26	SW SW	2.2	
36 S	12 E	WM	35	NW NE	0.4	
36 S	12 E	WM	35	NE NW	9.1	
36 S	12 E	WM	35	NW NW	7.3	
36 S	12 E	WM	35	SW NW	13.5	
36 S	12 E	WM	35	SE NW	30.4	
36 S	12 E	WM	35	NE SW	17.0	
36 S	12 E	WM	35	NW SW	23.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication