

**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 DUARTE AND)	DETERMINATION
SPRAGUE RIVER CATTLE COMPANY)	
_____)	Water Right Claim 124

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE PROPOSED ORDER**

1. Claim 124 (Claimants: RICHARD DUARTE AND SPRAGUE RIVER CATTLE COMPANY¹) and its associated contests (2845, 3500, 3766, and 4154) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 232.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 124 on February 20, 2007.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Richard Duarte, (2) Claude Taylor, and (3) the United States of America.
4. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 124. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8, and A.9, below.
5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.6, below.
 - c. The “Issues” is adopted in its entirety.

¹ Sprague River Cattle Company, successor in interest to Claude Taylor.

- d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.7, below.
- e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, below.
- f. The “Opinion” is replaced in its entirety as set forth in Section A.9, below.
- g. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 124. Consistent with Sections A.7, A.8 and A.9, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 248.9 acres, and to increase the rate and duty allowed on 10.3 acres to the full value claimed.

6. **Evidentiary Rulings.** Within the section titled “Evidentiary Rulings” of the Proposed Order, the first paragraph is modified as follows:

- a. Corrections are made to the following two items on the list of Evidentiary Rulings (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):
 - i. ~~Paul~~ Richard Fairclo’s Rebuttal Testimony on behalf of Claimants
 - ii. ~~Richard~~ Paul Fairclo’s Direct and Rebuttal Testimony on behalf of Claimants
- b. The REBUTTAL TESTIMONY OF RICHARD DUARTE dated February 7, 2006, is added to the list of items that were admitted into the record.
- c. The AFFIDAVIT OF RONALD S. YOCKIM IN REBUTTAL dated February 10, 2006, is added to the list of items that were admitted into the record.

Reasons for Modification: To correct scrivener’s errors and omissions from the list of Evidentiary Rulings.

7. **Findings of Fact.** The Proposed Order’s “Findings of Fact” section is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding. A summary of the general reasons for modification is provided here.

Summary of Reasons for Modification of Findings of Fact: (1) To correct scrivener’s errors and provide clarity of evidence in the record. (2) To provide evidence from Duarte’s Rebuttal Testimony which was omitted from the list of evidentiary rulings. (3) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, an issue raised in exceptions by the Claimants. (4) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership, an issue raised in exceptions by the Claimants. (5) To provide evidence from the record to substantiate beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (6) To provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (7) To provide evidence from

the record for establishing the appropriate rate, duty, and season of use on 10.3 acres within Allotments 314(S) and 316, an issue raised in exceptions by the Claimants. (8) In each instance where this Partial Order of Determination modifies historical findings of fact made by the ALJ, the Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record.

The Modified Proposed Order Findings of Fact

(1) On December 3, 1990, John House filed Claim 124 with OWRD for a water right in the Klamath Basin. (OWRD Ex. 1 at 1- ~~10~~ 9.) The claimed lands cover eight former Indian allotments that were allotted to individual Indian allottees as well as 8.2 acres of unallotted tribal lands. (Book Direct at 7.) The property to which Claim 124 is appurtenant was subsequently purchased by Richard Duarte and Claude Taylor² (Claimants). (Book Direct at 4; OWRD Ex. 1 at 21, 28-30, 51.) Richard Duarte owns 307.3 acres located north of the Sprague River (North Parcel) within Allotments 314(N)³, 449, and 1126, including 8.2 acres within an unallotted tribal parcel. Claude Taylor owns 387.8 acres located south of the Sprague River (South Parcel) within allotments 314(S)⁴, 315, 316, 317, 318, and 447. (Book ~~Rebuttal~~ Direct at 7 4-5, Ex. U2; OWRD Ex. 1 at 64.)

Reasons for Modification: To provide corrected and additional citations to the record.

(2) Claimants are asserting a *Walton* claim for water from the Sprague River as non-Indian successors to a Klamath Indian Allottees, and a Klamath Termination Act claim for water from the Sprague River as non-Indian successors to unallotted Klamath Indian Reservation lands, claiming sufficient water to irrigate each allotment's share of the Tribe's "practically ~~practically~~ irrigable acreage" (PIA). Claim 124 is for diversion of 17.34 cubic feet per second (cfs) from the Sprague River, tributary to the Williamson River, to irrigate 695.1 acres of hay and pasture grass. (~~Id.~~ OWRD Ex. 1 at 1-9.) The claimed place of use is located in Section 5, Section 8, and Section ~~13~~ 17 in Township 36 South, Range 12 East, W.M. (OWRD Ex. 1 at 4-5, 63.) The claimed point of diversion for the North Parcel is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 and for the South Parcel is located in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17. (OWRD Ex. 1 at 3, 63.) The claimed period of use is March 10 through November 10. (OWRD Ex. 1 at 8.) The claimed priority date is

² Sprague River Cattle Company, successor in interest to Claude Taylor

³ 314(N) refers to that portion of Allotment 314 north of the Sprague River.

⁴ 314(S) refers to that portion of Allotment 314 south of the Sprague River.

October 14, 1864, the date the Klamath Indian Reservation was created. Claimants have state water rights on all of the claimed lands with priority dates ~~ranging from~~ November 26, 1963 for Certificate 48537 (Allotments 314, 315, 316, 317, 318, 447), to and November 10, 1967 for Certificate 49275 (Allotments 449, 1126, 8.2 acres of unallotted lands) for surface water rights authorizing use of water from the Sprague River. ~~and~~ They also have one ground water certificate for supplemental irrigation on a portion of the claimed lands with a priority date of 1966. (OWRD Ex. 1 at 88-96.) The locations of the claimed points of diversions are the same locations as the points of diversions listed on these surface water certificates. (OWRD Ex. 1 at 3, 63, 88-93.) The claimed point of diversion which serves the North Parcel is still used on the Duarte lands, and the claimed point of diversion which serves the South Parcel is still used on the Taylor lands. (Book Direct at 16-17.) The United States concedes that Claimant Taylor has established *Walton* water rights to 366.4 of his acres and Claimant Duarte to 58.4 of his acres. (Book Rebuttal at 7.)

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record; to correct a scrivener's error (Section 13 is corrected to Section 17).

(3) On October 4, 1999, the Adjudicator of the Klamath Basin Adjudication issued a Preliminary Evaluation, recommending approval of this claim for a smaller quantity than originally claimed, and for a period of use of March 1 through October 31. (OWRD Ex. 189-193.)

North Parcel Allotments (Duarte) (total claimed 307.3 acres)

Allotment 449 (152.3 acres claimed)

(4) Allotment 449 is located within the NE¼, Section 8, Township 36 South, Range 12 East, W.M. and includes 152.3 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) Allotment 449 of the North Parcel was originally allotted to Thomas G. Smith, a Klamath Indian, and conveyed to him from the United States in fee simple on ~~November 15, 1920~~ August 13, 1920. (Book Direct at 11; Ex. U3; Ex. U6 at 7.) On July 30, 1927, Klamath County filed a Complaint against Mr. Smith for failure to pay

taxes from 1921 through 1925. (Klamath County Complaint, Paragraph IV; Ex. U18 at 5.) In its Complaint, Klamath County requested a “judgment, order and decree” against Mr. Smith’s property for “the amount of taxes, interest and penalties and costs due and charged against said property.” (*Id.* at Paragraph VIII; Ex. U18 at 6.) The sheriff was directed to sell each tract and parcel of Mr. Smith’s land in a public sale. (*Id.*) The allotment was sold by auction on June 2, 1928. (Sheriff’s Deed, Ex. U18 at 9.) Klamath County submitted the only bid and acquired the property on October 10, 1930. (~~Sheriff’s Return of Sale~~ Sheriff’s Deed, Ex. U18 at 9.) In 1935 (on October 16), Klamath County sold the property to George A. Default, a Klamath Indian. (Bargain Sale Deed, Ex. U18 at 22; Ex. C25, C29.) Allotment 449 remained in Indian ownership until 1966, when it was sold by Klamath Indian Effie Driscoll to Paul Fairclo. (Ex. C15.)

¶ Lands within Allotment 449 are subject to natural overflow from the Sprague River. (Ex. C45; Fairclo Direct at 2.) While under Indian ownership, a Certificate of Appraisalment (from an onsite inspection made May 20, 1920) characterized the land within Allotment 449 as river bottom land best adapted for grazing. (Ex. C45.) Beneficial use of water occurred under Indian ownership, beginning no later than 1941, as evidenced by the presence of fields and haying activity in 1941 and 1953 (Book Direct at 22), and cattle grazing by Indian owners (Ex. C55 at 47). Paul Fairclo leased Allotment 449 from Indian owners for the purpose of grazing cattle prior to his purchase of the property in 1966. (Fairclo Direct at 2; Ex. C55 at 15-16.) Paul Fairclo established a state water right on this parcel with a priority date of November 10, 1967. (Book Direct at 17-19; OWRD Ex. 1 at 92.) The 152.3 acres of claimed lands within Allotment 449 have been continuously authorized for irrigation from the Sprague River under Permit S-32737 / Certificate 49275 since 1967 (OWRD Ex. 1 at 92) and have continued to be irrigated as claimed. (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2; Duarte Rebuttal at 1-4.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 30, SE¼ SW¼, Section 8, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 93.)

The elements necessary for a *Walton* claim for 152.3 acres in Allotment 449 have been established. The water rights granted for the 152.3 acres within this allotment

should have the following attributes: the rate of diversion should be 3.81 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modifications: Using evidence on the record, to provide more specific information with reference to what was claimed; to correct the date the allotment was conveyed from the United States to the allottee; to correct the date that Klamath County sold the property to George Default; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record.

Allotment 314(N) (48.3 acres claimed)

(5) Allotment 314(N) (north of the Sprague River) is located within the NE¼ SW¼, NW¼ SW¼, and SE¼ SW¼, Section 8, Township 36 South, Range 12 East, W.M. and includes 48.3 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) Regarding Allotment 314(N) of the North Parcel, a fee simple patent was granted to Margaret David Johnson, an Indian, on September 12, 1958. (Ex. U6 at 1.) On February 14, 1962, the first non-Indians, Paul and Ann Fairclo, purchased it. (Book Direct at 10; OWRD Ex. 1 at 52.)

¶ Lands within Allotment 314(N) are subject to natural overflow from the Sprague River. (OWRD Ex. 1 at 47, 73; Fairclo Direct at 2; C34 at 4-6.) Beneficial use of water began prior to transfer from Indian ownership to non-Indian successors. In 1910, a lease approved farming and grazing for Allotment 314 (North and South). (Ex. C36.) A 1957 appraisal report asserted that the “Sprague River flows through the subject [Allotment 314] dividing it into four or more segments, all of which are subject to flooding each year until late in June. This flooding helps to produce good pasturage and cattle are able to wade the river when flood waters recede to normal flow.” (Ex. C34 at 4.) Fairclo leased the property from Indian owners for the purpose of grazing cattle prior to his purchase in 1962. (OWRD Ex. 1 at 47; Ex. C55 at 15-16; Fairclo Direct at 2). In addition to natural overflow from the Sprague River, drain water from artesian wells was delivered to this parcel through a drain ditch along the south line of Allotment 449 prior to transfer of Indian ownership to non-Indian successor Fairclo. (Fairclo Direct at 4; Ex. C55 at 36-38.) Water from this drain ditch was cut off from Allotment 314(N) when Paul Fairclo constructed a north-south canal along the west sides of Allotments 447 and 449. This

canal was part of a new irrigation system for a diversion from the Sprague River (authorized under Permit S-29348 / Certificate 48537). (Fairclo Direct at 4; C55 at 37-39; OWRD Ex 1 at 88-91.) Paul Fairclo has unsuccessfully attempted irrigation in this Allotment. (Id. at 18.) Paul Fairclo has admitted that, after a the drain ditch was severed; irrigation “we took water from this irrigation system across there [to Allotment 314(N)] but I’ve got to tell you that it wasn’t too successful because the pipe wasn’t always in good shape and that we didn’t always irrigate it.” (Book Rebuttal at 6; C55 at 39 - quotes from Paul Fairclo’s deposition.) During the time when irrigation “wasn’t too successful,” Fairclo testified that he continued to run cattle in this allotment. (Ex. C55 at 42.) When using the Sprague River irrigation system on Allotment 314(N), Fairclo describes how he used a (northern) pump at Drew Road to pull water into the [north-south] ditch. Then he could turn water out onto the allotment through a series of head gates and culverts. (Fairclo Direct at 4.) A 1986 OWRD Field Investigation Report noted that the northern pump was missing as it was used to replace a pump on a different parcel that year, and that there were no means to irrigate this land other than the spring-time overflow. (Book Direct at 22.) (OWRD Ex. 1 at 73.) The 48.3 acres of claimed lands within Allotment 314(N) have been continuously authorized for irrigation from the Sprague River under Permit S-29348 / Certificate 48537 since the early 1960s (OWRD Ex. 1 at 48, 88-90) and have continued to be irrigated as claimed. (OWRD Ex. 1 at 47-48; Fairclo Direct at 4; Duarte Rebuttal at 1-4.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 16, SE¼ NE¼, Section 17, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 90.)

The elements necessary for a *Walton* claim for 48.3 acres in Allotment 314(N) have been established. The water rights granted for the 48.3 acres within this allotment should have the following attributes: rate of diversion of 1.21 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ’s proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record.

Allotment 1126 (98.5 acres claimed)

(6) Allotment 1126 is located within the S½ S½, Section 5, Township 36 South, Range 12 East, W.M. and includes 98.5 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) Regarding Allotment 1126 of the North Parcel, the first non-Indian owners, Paul and Ann Fairclo, acquired the property in 1966. (Book Direct at 12; Ex. U3.)

¶ Starting in 1967, a the claimed portion of Allotment 1126 started being irrigated from the Sprague River via Paul Fairclo's diversion under Permit S-32737, which was certificated in 1980 (Certificate 49275). (Book Direct at 19; OWRD Ex. 1 at 92.) Water from this diversion did not reaches the 15.9 acres of Allotment 1126 lying north of the functioning ditch. (Id. at 23.) The Sprague River did not continuously reach and the 24.5 acres in the northeastern portion of the allotment using spreader ditches and handlines (pipe). (Id.) (OWRD Ex. 1 at 92-94; Fairclo Direct at 5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 2.) These 24.5 acres have been authorized for supplemental irrigated irrigation with well water pursuant to Certificate 49274, starting in 1966. (Book Direct at 19-20, OWRD Ex. 1 at 31.) This groundwater certificate for supplemental irrigation covers all the claimed portion of Allotment 1126, and was perfected on the same day as its primary water right Certificate 49275. (Book at 19-20; Ex. U19; OWRD Ex. 1 at 31-34.) At times the well water authorized under this supplemental certificate has been utilized for irrigation. (Ex. U17.) The United States concedes that Claimants and Paul Fairclo have met their burden of establishing *Walton* water rights for 58.1 acres within Allotment 1126 because these acres were reasonably developed by the first non-Indian owner, Paul Fairclo, from a Sprague River diversion with a state water right Certificate 49275. (Id., Book Direct at 23; Book Rebuttal at 6-7.) However, the remaining 40.4 acres of claimed lands within Allotment 1126 have also been developed with reasonable diligence for irrigation from the Sprague River, with irrigation beginning within a year following transfer from Indian ownership. This development is reflected in Permit S-32737 / Certificate 49275. (OWRD Ex. 1 at 92). All 98.5 acres claimed have continued to be irrigated. (Fairclo Direct at 4-5; Duarte Rebuttal at 1-4.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is

located in Government Lot 30, SE¼ SW¼, Section 8, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 93.)

The elements necessary for a *Walton* claim for 98.5 acres in Allotment 1126 have been established. The water rights granted for the 98.5 acres within this allotment should have the following attributes: rate of diversion of 2.46 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record. In addition, OWRD has determined that the ALJ's finding that the diversion did not reach the 15.9 acres or continuously reach the 24.5 acres is not supported by a preponderance of evidence on the record.

Unallotted Lands (8.2 acres claimed)

(7) The unallotted tribal lands claimed in the Northern Parcel include 8.2 acres within the N½ SE¼, Section 5, Township 36 South, Range 12 East, W.M. (Ex. U2; OWRD Ex. 1 at 63.) Regarding the 8.2 acres of the unallotted tribal part in the Northern Parcel, the first non-Indian owners were Paul and Ann Fairclo in 1966. (Book Direct at 13.)

¶ This unallotted parcel is located in the far northeastern portion of Claim 124, ~~and does not appear irrigated in most aerial photographs. (Book Direct at 23-24.)~~⁵ ~~The acres that do appear to be irrigated are covered by the groundwater from the well subject to Certificate 49274 (*Id.*; Ex. U20).~~ Paul Fairclo established a diversion for irrigation on this parcel from the Sprague River under a state water right with a priority date of November 10, 1967 (Permit S-32737 / Certificate 49275. (Book Direct at 17; OWRD Ex. 1 at 92-93.) According to Book, only 0.3 acres of the 8.2 acres in the unallotted parcel appear to receive Sprague River water from the Fairclo diversion, under Certificate

⁵ In the Affidavit and Testimony of Dale Book (Book Direct), no such statement is made at pages 23 or 24, or in Section 16 of the testimony, where Book summarizes his analysis of aerial photographs for the North Parcel/Duarte Lands.

49275, and the remaining 7.9 acres are irrigated only by the well (Certificate 49274) or have not been continuously irrigated. (Id. at 23-24; Ex. U3.) The United States concedes that Claimants and Fairclo have established Walton water rights for these 0.3 acres. (Book Rebuttal at 7.) The remaining 7.9 acres are mostly irrigated by groundwater. (Id.; Ex. U20.) However, Fairclo irrigated the lands in the N½ S½ of Section 5 from the Sprague River point of diversion with the use of pumps and hand lines (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; OWRD Ex. 1 at 94), and these lands have continued to be irrigated (Duarte Rebuttal at 1-4). The 8.2 acres of claimed lands have been continuously authorized for irrigation from the Sprague River under Permit S-32737 / Certificate 49275 since 1967. (OWRD Ex. 1 at 92.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 30, SE¼ SW¼, Section 8, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 93.)

The elements necessary for a Klamath Termination Act claim for 8.2 acres of unallotted lands have been established. The water rights granted for the 8.2 acres within this allotment should have the following attributes: rate of diversion of 0.20 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record. In addition, the statement that the unallotted parcel does not appear irrigated in most aerial photographs is stricken because OWRD finds that no such statement is made in the Affidavit and Testimony of Dale Book (Book Direct) at 23 or 24, nor in paragraph 16 where Book summarizes his analysis of aerial photographs for the North Parcel/Duarte Lands. The statement that 7.9 acres are mostly irrigated by ground water was stricken because OWRD finds that it is not supported by a preponderance of the evidence on the record.

South Parcel Allotments (Taylor)(total claimed 387.8 acres)

Allotments 314(S), 315, 316, 317, 318, 447

(8) Allotment 314(S) (south of the Sprague River) is located within the NW¼ SW¼ and S½, Section 8, and includes 56.9 acres of claimed lands. Allotment 315 is

located within the NE¼, Section 17, and includes 98.2 acres of claimed lands. Allotment 316 is located within the NW¼, Section 17, and includes 146.1 acres of claimed lands. Allotment 317 is located within the N½ S½, Section 17, and includes 69.5 acres of claimed lands. Allotment 318 is located within the N½ S½ S½ Section 17, and includes 6.0 acres of claimed lands. These allotments are all located within Township 36 South, Range 12 East, W.M (Ex. U2; OWRD Ex. 1 at 63.) Allotments 314(S), 315, 316, 317, 318 of the South Parcel (all of the south parcel allotments except for Allotment 447) were first purchased by a non-Indian, Paul Fairclo, in 1962. (Book Direct at 8-11; Ex. U3.)

¶ (9) Allotment 447 is located within the SE¼, Section 8, Township 36 South, Range 12 East, W.M. and includes 11.1 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) The record contains no deed evidence to identify the first non-Indian purchaser of Allotment 447 of the South Parcel. (Book Direct at 10-11.) The elements necessary for a *Walton* claim have not been established for Allotment 447.

¶ (10) Lands within the south parcel allotments are subject to natural overflow from the Sprague River. (OWRD Ex. 1 at 47; Paul Fairclo Direct at 2; Ex. C34 at 4-16.) Beneficial use of water began prior to transfer from Indian ownership to non-Indian successors. In 1910, farming and grazing leases were approved for Allotments 314(S), 316 (Ex. C36), and 315 (Ex. C38). While under Indian ownership, a Certificate of Appraisalment (from an onsite inspection made September 25, 1945) characterized 720 acres within Allotments 314-5-6-7-8 as grazing land. (Ex. C32.) Fairclo leased the property from Indian owners for the purpose of grazing cattle prior to his purchase in 1962. (OWRD Ex. 1 at 47; Ex. C55, page 15; Fairclo Direct at 2). In 1963, Paul Fairclo developed an irrigation system in the South Parcel. (Book Direct at 16.) He secured state water right Certificate 48537. (Book Direct at 20; Ex. U19.) Based on his analysis of aerial photos of the South Parcel Allotments, Book opined that 366.4 acres within Allotments 314(S), 315, 316, 317, 318 have been continuously irrigated. (*Id.* at 21-22.) Book opined that 10.3 acres within Allotments 314(S), 315, 316, 317, 318 have not been continuously irrigated because the area has been under water in repeated aerial photographs. (Book Rebuttal at 3-4.) Although according to Book, the latest photo during a year was in late July and revealed flooding in the area- (*Id.* at 4-), the area dries

up later in the season (~~Direct Testimony of Taylor Direct at 2~~). This flooding is typical, and is due in part to irrigation water that collects in areas of natural depressions. Such areas dry out in late summer and are grazed. (Taylor Direct at 2, Ex. 1; Ex. C55 at 34-35.) ~~The water duty should be reduced by at least one-half to account for the limited period of growth and the season limited to August and September. (Book Rebuttal at 4.)~~ The 376.7 acres of claimed lands within Allotments 314(S), 315, 316, 317, 318 have been continuously authorized for irrigation from the Sprague River under Permit S-29348 / Certificate 48537 since the early 1960s. (OWRD Ex. 1 at 48, 88-90.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 16, SE¼ NE¼, Section 17, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 90.)

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide clarification to a citation to the record. In addition, OWRD has determined that the ALJ's finding with respect to the statement that the water duty on 10.3 acres should be reduced by at least one-half to account for the limited period of growth is not supported by a preponderance of the evidence on the record. OWRD has determined that the ALJ's proposal to limit the season of use to August and September on these 10.3 acres is not supported by a preponderance of the evidence on the record and therefore has been stricken; OWRD finds that no evidence of any statement made about the season of use on this 10.3 acres in the rebuttal testimony of Book at 4.

¶ (11) The elements necessary for a Walton claim for 376.7 acres in the South Parcel have been established. The water rights granted for the ~~366.1~~ 376.7 acres within these allotments (314(S), 315, 316, 317, 318) should have the following attributes: ~~the a~~ a rate of diversion ~~should be 1/cfs per 40 acres~~ of 9.42 cfs with a limit of 1/40 cfs per acre during an irrigation season, and the a water duty ~~should be of~~ 3.0 acre-feet per acre, during an irrigation season. ~~and The irrigation season should be March 10 to October 31 November 10, as claimed. (Book Direct at 24-25.) Claimants did not contest these attributes.~~

Reasons for Modification: To add clarification using evidence on the record. In addition, OWRD has determined that the ALJ's proposed season of use March 1 to October 31 is not supported by a preponderance of the evidence on the record. Note: The 366.1 acres noted in the ALJ's proposed order (second sentence) is a scrivener's error; it should have been 366.4 acres as referenced in Proposed Order Findings of Facts 2 and 9.

8. **Conclusions of Law.** The Proposed Order's "Conclusions of Law" section is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

1. ~~The first purchaser rule, as defined in the *Walton* line of cases, dictates that Klamath County was the first non-Indian owner of Allotment 449, which was acquired initially through foreclosure and subsequently through Sheriff's public auction, was held by Klamath County for less than five years before being returned to Indian ownership.~~

2. Beneficial use of water by the method of natural overflow cannot establish is a valid basis for a *Walton* water right, and is established on Allotments 314(S), 315, 316, 317, 318 in the South Parcel, and on Allotments 314(N) and 449 in the North Parcel.

3. Irrigation has continued on the claimed portions ~~of part~~ of Allotments 314(N), 1126, and the unallotted portion of the Northern Parcel. ~~has been continuous.~~

4. Claimants' *Walton* water right is not reduced for ~~areas of open water in any~~ portions of Allotments 314(S) and 316, ~~but the water duty for these areas is reduced by one-half.~~

5. Claimants have not provided sufficient title information to establish a *Walton* water right in Allotment 447.

6. The Klamath Tribes Termination Act is a valid basis for the portion of the claim covering unallotted, former Klamath Indian Reservation land.

Reason for Modifications: To ensure that final conclusions reflect the evidence in the record and the application of the appropriate legal bases to the evidence in the record.

9. **Opinion.** The section titled "Opinion" of the Proposed Order is replaced in its entirety as follows:

OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS and the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

In addition, OWRD incorporates into the Opinion section all the paragraphs below:

Application of Walton Elements to the Modified Proposed Order Findings of Fact

The burden of proof to establish a claim is on the claimant. ORS 539.110; OAR 690-028-0040. All facts must be shown to be true by a preponderance of the evidence. *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999); *Cook v. Employment Division*, 47 Or App 437 (1980); *Metcalf v. AFSD*, 65 Or App 761, (1983), *rev den* 296 Or 411 (1984); *OSCI v. Bureau of Labor and Industries*, 98 Or App 548 *rev den* 308 Or 660 (1989). Thus, if, considering all the evidence, it is more likely than not that the facts necessary to establish the claim are true, the claim must be allowed. The proponent of a fact or position has the burden of presenting evidence to support that fact or position. ORS 183.450(2).

The issues in contention are listed above for the 270.3 acres in dispute. The issues are considered separately below.

1. Klamath County as a non-Indian successor of Allotment 449

Claimants assert *Walton* water rights for 152.3 acres within Allotment 449 located in the North Parcel of this claim. (Book Direct, Ex. U3.) They concede that Klamath County is the first non-Indian owner of Allotment 449, purchased in a foreclosure sale of the property.⁶ They argue that such ownership should not count as the first non-Indian purchaser because Klamath County acquired the allotment through foreclosure and public auction. (See Claimants' Closing Brief at 22-28.)

Claimants advance a number of arguments in support of their position. First, they assert that the *Walton* line of cases is distinguishable on their facts from the present case with respect to the limitation on the appropriation of water by the first non-Indian appropriator. They suggest that the court in the *Walton* cases was not confronted by the situation presented in this case, where the property was acquired in foreclosure. Second, Claimants argue that Klamath County should not be treated as the first non-Indian purchaser because of Klamath County's alleged inability to develop the property it purchased. Claimants rely on the language that "a non-Indian purchaser, under no competitive disability vis-à-vis other water users, may not retain the right to that quantity of water despite non-use." *Walton II*, 647 F.2d at 51 (emphasis by Claimants). Claimants argue that Klamath County was not a user of water and was at a competitive disability because it had no legal right to develop irrigation. Third, Claimants argue that such rights cannot be lost by inaction by a governmental entity.

It is unnecessary to address the effects of Klamath County's purchase of the property, whether due to Klamath County's status as a government entity or due to the particular circumstances in which Klamath County acquired the property. OWRD declines to do so.

⁶ Claimants argued that Klamath County acquired the property through foreclosure, which seems to imply that it was only foreclosing on a note it held. Such was not the case. Klamath County acquired the land at a public auction as any other purchaser could.

In *United States v. Anderson*, the Ninth Circuit addressed the effect on *Walton* rights of reacquisition by an Indian tribe after a period of non-Indian ownership. The court held that:

a non-Indian successor acquires a right to that quantity of water being utilized at the time title passes, plus that amount of water which the successor puts to beneficial use with reasonable diligence following the transfer of title. Where “the full measure of the Indian's reserved water right is not acquired by this means and maintained through continued use, it is lost to the non-Indian successor.” Consequently, on reacquisition the Tribe reacquires only those rights which have not been lost through nonuse and those rights will have an original, date-of-the-reservation priority.

736 F2d 1358, 1362 (1984). As is discussed in greater detail in the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS, “reasonable diligence” is the measure of whether a *Walton* right has been timely developed after transfer from Indian ownership. Per *Anderson*, if the period for reasonably diligent development expired prior to reacquisition of the property by a member of the Klamath Tribes, reacquisition by the member cannot revitalize the right. However, if the period for reasonably diligent development has not expired by the time of reacquisition of the property by a member of the Klamath Tribes, then an inchoate right remains appurtenant to the property. If the inchoate right has returned intact to Indian ownership, the Indian owner retains the right to hold the inchoate right indefinitely, so long as the property remains within Indian ownership.

In the case of Allotment 449, the property was in non-Indian ownership between October 20, 1930 and October 16, 1935, a period just short of five years. The period for reasonably diligent development of a water right is dependent on a number of circumstances, and may vary in length. Generally, though, within a five year period an inchoate right will not be considered to have expired for failure to diligently develop. The five-year period is the default period for diligent development under Oregon’s Water Rights Act. ORS 537.230(1). Given this general rule, and the considerable size of the allotment, we conclude that the inchoate *Walton* right had not expired by the time it re-entered Indian ownership on October 16, 1935, and therefore remained eligible for development.⁷

2. Natural flooding/ natural overflow

There is no dispute that the land in Claim 124 was formerly part of the Klamath Indian Reservation, that the land was allotted to Klamath tribal members, and that the land was transferred to non-Indians. Claimants claim a water right for grass and pasture for livestock, based in good part on natural overflow of the Sprague River.

⁷ Oregon Administrative Rule 690-028-0026(3) provides that in a filing for Practicably Irrigable Acreage a claimant shall document through a chain of title statement that the lands have never had more than *five consecutive years* of non-Indian ownership since the date of the reservation (emphasis added). We interpret this rule to pertain only to the documentation accompanying a claim, and not to set a fixed period for reasonably diligent development of Practicably Irrigable Acreage (inchoate acreage).

Allotment 449 is subject to natural overflow, and beneficial use of water by natural overflow was established under Indian ownership no later than 1941, after the period of non-Indian ownership described above. Allotments 314 (North and South), 315, 316, 317, and 318 are subject to natural overflow, and beneficial use of water by natural overflow on these allotments was established under Indian ownership prior to transfer to non-Indian successors. Beneficial use of water by natural overflow in Allotment 314(N) continued under non-Indian ownership during times when an irrigation system was not utilized.

3. Reasonable diligence

Allotment 449

Lands within Allotment 449 are subject to natural overflow from the Sprague River. Beneficial use of water by the method of natural overflow from the Sprague River was established no later than 1941, as evidenced by the presence of fields and haying activity in 1941 and 1953 (Book Direct at 22), and cattle grazing by Indian owners (Ex. C55 at 47.) Paul Fairclo leased Allotment 449 from Indian owners for the purpose of grazing cattle prior to his purchase of the property in 1966. (Fairclo Direct at 2; Ex. C55 at 15-16.) Paul Fairclo developed an irrigation system for these lands under the authority of a state water right (Permit S-32737 / Certificate 49275) with a priority date of November 10, 1967. Beneficial use of water has continued as claimed. (Fairclo Direct at 4; Paul Fairclo Rebuttal at 1-2; Duarte Rebuttal at 1-4.) Because the right was not lost as to Allotment 449 during Klamath County's ownership, from 1930 to 1935, beneficial use under subsequent Indian ownership is sufficient to establish reasonably diligent development.

Allotment 314(N)

Lands within this allotment are subject to natural overflow from the Sprague River. Beneficial use of water by the method of natural overflow from the Sprague River was established while still in Indian ownership. (Ex. C34 at 4-6, C36, C55 at 15-16; OWRD Ex. 1 at 47, Fairclo Direct at 2.) In addition to natural overflow from the Sprague River, tailwater from an artisan well(s) was delivered to this allotment through an east-west drain ditch prior to transfer of Allotment 314(N) from Indian ownership to non-Indian successors. The first non-Indian successors were Paul and Ann Fairclo in 1962. Fairclo cut off the water supply from the east-west drain ditch when establishing a new irrigation system from the Sprague River; the drain ditch was severed during the construction of a north-south canal designed to utilize Sprague River water. Dale Book, who was qualified as an expert and whose testimony was not rebutted by expert testimony, has opined that, based on aerial photographs, no irrigation has occurred within Allotment 314(N) because the parcel appears dry in aerial photographs after a tailwater ditch at the south end of Allotment 449 was severed prior to 1968. (Book Direct at 17-18.) Book's conclusion is based on his analysis of photographs from five days taken over a 32-year span (1968 – 2000). This is not an adequate assessment of whether beneficial use of water was made with reasonable diligence or continued. During limited periods of time when Allotment 314(N) was not irrigated using an irrigation system, Fairclo

continued to graze cattle on this allotment, making beneficial use of Sprague River water by the method of natural overflow. (Ex. C55 at 42; OWRD Ex. 1 at 73.) Fairclo perfected the use of irrigation water from the Sprague River to this allotment by 1979 as evidenced by the issuance of a water right certificate including these lands. (OWRD Ex. 1 at 88-91.) Beneficial use of water has continued as claimed. (OWRD Ex. 1 at 47-48; Fairclo Direct at 4; Duarte Rebuttal at 1-4.)

Allotment 1126

The first non-Indian successors of this allotment were Paul and Ann Fairclo in 1966. The United States concedes that Claimants and Paul Fairclo have met their burden of establishing *Walton* water rights for 58.1 acres within Allotment 1126 because these acres were reasonably developed and continuously irrigated by Fairclo. (Book Direct at 23.) Book opined that 15.9 acres located within Allotment 1126 are above the functioning ditch and have not been continuously irrigated (*Id.*). Further, he stated that the well authorized by Certificate 49274 is the only source of irrigation for the 24.5 acres east of the draw located in Allotment 1126. (Book Direct at 17; Ex. U20.) A groundwater certificate covers the claimed lands in Allotment 1126, and at times these lands have been irrigated under the groundwater certificate. However, this ground water right is supplemental to Certificate 49275 which specifically authorizes primary irrigation from the Sprague River. The claimed portion of Allotment 1126 started being irrigated from the Sprague River in 1967 via Paul Fairclo's diversion under Permit S-32737. (Book Direct at 19; OWRD Ex. 1 at 92.) Fairclo perfected use of irrigation water from the Sprague River on all the claimed lands within Allotment 1126 as evidenced by the issuance of water right Certificate 49275 in 1980. (OWRD Ex. 1 at 92.) The record establishes that water from the Sprague River diversion reaches these 40.8 acres using spreader ditches and handlines (pipe). (OWRD Ex. 1 at 94; Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.) Beneficial use of water was made with reasonable diligence on 98.5 acres within Allotment 1126 after transfer from Indian ownership to non-Indian successors. Beneficial use of water on the claimed acres in Allotment 1126, including the 15.9 acres north of the ditch, and the 24.5 acres in the northeastern portion of the allotment, has continued as claimed. (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.)

Unallotted Lands in Section 5

The first non-Indian successors of these parcels of land were Paul and Ann Fairclo in 1966. The United States concedes that Claimants and Fairclo have established *Walton* water rights for these 0.3 acres of the 8.2 acres within the unallotted parcel. Book opined that 7.9 acres are served only by well water or have not been continuously irrigated. (Book at 24.) A groundwater certificate covers the claimed unallotted lands in Section 5, and at times these lands have been irrigated under the groundwater certificate. However, this groundwater right is supplemental to Certificate 49275, which specifically authorizes primary irrigation from the Sprague River. The claimed unallotted lands in Section 5 started being irrigated from the Sprague River in 1967 via Paul Fairclo's diversion under Permit S-32737. (Book Direct at 19; OWRD Ex. 1 at 92.) Fairclo perfected use of irrigation water from the Sprague River on 8.2 acres of unallotted lands in Section 5 as evidenced by the issuance of water right Certificate 49275 in 1980.

(OWRD Ex. 1 at 92.) The record establishes that water from the Sprague River diversion reaches these 8.2 acres using spreader ditches and handlines (pipe). (OWRD Ex. 1 at 94; Fairclo Direct at 5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.) Beneficial use of water was made with reasonable diligence on the 8.2 acres of unallotted lands in Section 5 after transfer from Indian ownership. Beneficial use has continued as claimed. (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.)

Allotments 314(S), 315, 316, 317, and 318

Lands within these allotments are subject to natural overflow from the Sprague River. Beneficial use of water by the method of natural overflow from the Sprague River was established under Indian ownership prior to transfer to non-Indian successors (Ex. C32, C34, C36, C38). Paul Fairclo leased the property from Indian owners for the purpose of grazing cattle prior to his purchase of the land in 1962. (OWRD Ex. 1 at 47; Ex C55 at 15; Fairclo Direct at 2). After becoming the non-Indian successor to these allotments, Paul Fairclo developed an irrigation system for these lands under an established a state water right with a priority date of November 26, 1963 (Permit S-29348 / Certificate 48537). Beneficial use of water has continued as claimed. (OWRD Ex. 1 at 47-48; Fairclo Direct at 3-4; Taylor Direct at 1-3.)

Allotment 447

Claimants have not established *Walton* water rights for the 11.1 acres in Allotment 447 because the first non-Indian purchaser is not identified. Furthermore, the Claimants have provided no evidence of the date when the property left Indian ownership.

4. Open water surface, Allotments 314(S) and 316

Book opined that 10.3 acres within Allotments 314(S) and 316 have not been irrigated because the area has been under water in repeated aerial photographs. (Book Rebuttal at 3-4.) Photographic evidence taken sparsely throughout the growing season once revealed flooding in the area as late as July. At issue is whether or not beneficial use of water has been made on these 10.3 acres within Allotments 314(S) and 316. Testimony on behalf of Claimants establishes that this flooding recedes later in the season. Furthermore, testimony establishes that the flooding is typical, and is due in part to the irrigation water that collects in areas of natural depressions. Given that these lands are grazed in late summer, beneficial use of water has been demonstrated on these 10.3 acres. Therefore, Claimants have established *Walton* water rights.

The water rights granted for the 10.3 acres within these allotments should have attributes which are consistent with the appurtenant state water right certificates: rate of diversion of 0.26 cfs with a limit of 1/40 cfs per acre, and a water duty of 3.0 acre-feet per acre. The record supports the irrigation season as claimed and should be March 10 to November 10.

5. Continued Use

As described in the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS, a *Walton* claimant need not establish continuous beneficial use of water following initial development of the right. Instead, a contestant has the burden to prove that a claimant has abandoned the right after development. In this case, Book's testimony tends to show non-use of water on certain allotments on five specific days over a 32-year period, based on analysis of aerial photographs. The sporadic nature of this evidence is insufficient to establish abandonment of any portion of the developed rights. In addition, there is testimony that groundwater may have been used to irrigate portions of certain allotments during certain periods of time, and that Fairclo's ditch system may not have provided water to portions of certain allotments during certain periods of time. Again, this evidence of non-use is too sporadic to establish abandonment. In addition, Fairclo continued to graze cattle and make beneficial use of natural overflow during periods when the ditch system was unable to serve portions of certain allotments. The developed water rights have not been abandoned.

6. Summary

North Parcel:

Claimants have established *Walton* water rights for 299.1 acres within Allotments 314(N), 449, and 1126, as explained above.

Claimants have established Klamath Termination Act water rights for 8.2 acres of unallotted lands within Section 5, as explained above.

The water rights granted for the 307.3 acres within these allotments should have attributes which are consistent with the appurtenant state water right certificates: the rate of diversion should be 7.68 cfs with a limit of 1/40 cfs per acre, and the water duty should be 3.0 acre-feet per acre. The record supports the irrigation season as claimed and should be March 10 to November 10.

South Parcel:

Claimants have established *Walton* water rights for 376.7 acres within Allotments 314(S), 315, 316, 317, and 318, as explained above.

The water rights granted for the 376.7 acres within these allotments should have attributes which are consistent with the appurtenant state water right certificates: the rate of diversion should be 9.42 cfs with a limit of 1/40 cfs per acre, and the water duty should be 3.0 acre-feet per acre. The record supports the irrigation season as claimed and should be March 10 to November 10.

Reasons for Modification: (1) To correct and clarify the elements of a *Walton* water right. (2) To provide clarity of evidence in the record and further substantiate approval of the claim, especially pertaining to beneficial use of water prior to transfer from Indian ownership and beneficial use of water being made with reasonable diligence after transfer to non-Indian successors. (3) To correct the basis used to evaluate a period of non-Indian

ownership in Allotment 449. (4) To apply the appropriate legal bases to the Proposed Order's modified findings of fact.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.6, above.
 - c. The "Issues" is adopted in its entirety.
 - d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
 - f. The "Opinion" is replaced in its entirety as set forth in Section A.9, above.
 - g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 124. Consistent with Sections A.7, A. 8 and A.9, above, the outcome of the Order has been modified to recognize a right for irrigation on an additional 248.9 acres, and to increase the rate and duty allowed on 10.3 acres to the full value claimed.
2. The elements of a Walton claim are established for the acres described in the Water Right Claim Description, below. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for a portion of this claim. The elements of a Klamath Termination Act claim are established for 1.1 acres within the SE¼ SW¼, and 7.1 acres within the SE¼ SE¼, SECTION 5, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.
4. Beneficial use of water by the method of natural overflow is shown to be established prior to the development of specific points of diversion for portions of this claim.
5. Based on the file and record herein, IT IS ORDERED that Claim 124 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 124

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 12 E

CLAIMANT: RICHARD DUARTE
9701 HARVEY RD
GALT, CA 65632

SPRAGUE RIVER CATTLE COMPANY
35000 SPRAGUE RIVER ROAD
SPRAGUE RIVER, OR 97639

SOURCE OF WATER: The SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE OR USE:

IRRIGATION OF 684.0 ACRES, BEING 307.3 ACRES FROM THE NORTH (DUARTE) POD, AND 376.7 ACRES FROM THE SOUTH (TAYLOR) POD

RATE OF USE:

17.10 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 7.68 CFS FROM THE NORTH (DUARTE) POD AND 9.42 CFS FROM THE SOUTH (TAYLOR) POD

DUTY:

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

LIMIT:

1/40 CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: MARCH 10 - NOVEMBER 10

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
North (Duarte) POD	36 S	12 E	WM	8	SE SW	30	475 FEET NORTH AND 50 FEET WEST FROM S¼ CORNER, SECTION 8
South (Taylor) POD	36 S	12 E	WM	17	SE NE	16	460 FEET NORTH AND 25 FEET WEST FROM E¼ CORNER, SECTION 17


THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	5	SW SW		14.4	North (Duarte) POD
36 S	12 E	WM	5	SE SW		22.0	
36 S	12 E	WM	5	NE SE		7.1	
36 S	12 E	WM	5	NW SE		1.1	
36 S	12 E	WM	5	SW SE		31.6	
36 S	12 E	WM	5	SE SE		30.5	
36 S	12 E	WM	8	NE NE	1	14.3	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	8	NE NE	8	20.0	North (Duarte) POD
36 S	12 E	WM	8	NW NE	2	19.0	
36 S	12 E	WM	8	NW NE	7	20.0	
36 S	12 E	WM	8	SW NE	10	19.5	
36 S	12 E	WM	8	SW NE	15	19.5	
36 S	12 E	WM	8	SE NE	9	20.0	
36 S	12 E	WM	8	SE NE	16	20.0	
36 S	12 E	WM	8	NE SW	19	18.2	
36 S	12 E	WM	8	NE SW	22	11.0	
36 S	12 E	WM	8	NW SW	20	9.7	
36 S	12 E	WM	8	SE SW	27	8.6	
36 S	12 E	WM	8	SE SW	30	0.8	
36 S	12 E	WM	8	NW SW	21	3.5	
36 S	12 E	WM	8	SW SW	28	14.8	
36 S	12 E	WM	8	SW SW	29	20.0	
36 S	12 E	WM	8	SE SW	27	1.4	
36 S	12 E	WM	8	SE SW	30	17.2	
36 S	12 E	WM	17	NE NE	8	5.1	
36 S	12 E	WM	17	NW NE	2	6.2	
36 S	12 E	WM	17	NW NE	7	15.2	
36 S	12 E	WM	17	SW NE	10	20.0	
36 S	12 E	WM	17	SW NE	15	18.8	
36 S	12 E	WM	17	SE NE	9	15.2	
36 S	12 E	WM	17	SE NE	16	17.7	
36 S	12 E	WM	17	NE NW	3	20.0	
36 S	12 E	WM	17	NE NW	6	20.0	
36 S	12 E	WM	17	NW NW	4	20.0	
36 S	12 E	WM	17	NW NW	5	19.9	
36 S	12 E	WM	17	SW NW	12	16.7	
36 S	12 E	WM	17	SW NW	13	11.5	
36 S	12 E	WM	17	SE NW	11	19.5	
36 S	12 E	WM	17	SE NW	14	18.5	
36 S	12 E	WM	17	NE SW	19	12.7	
36 S	12 E	WM	17	NW SW	20	0.8	
36 S	12 E	WM	17	NE SE	17	17.5	
36 S	12 E	WM	17	NE SE	24	17.5	
36 S	12 E	WM	17	NW SE	18	17.5	
36 S	12 E	WM	17	NW SE	23	3.5	
36 S	12 E	WM	17	SE SE	25	6.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication