

**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
WILLIAM L. GALLAGHER AND)	DETERMINATION
WHISKEY CREEK RANCH)	
_____)	
)	Water Right Claim 128

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 16, 1991, WHISKEY CREEK RANCH AND WILLIAM L. GALLAGHER (Claimants) timely submitted a Statement and Proof of Claim (Claim 128) 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 128 was submitted for a total of 16.25 cfs of water from Lola-K-Wast Spring, Modoc Billy Creek, and an unnamed spring, tributaries of Whiskey Creek, and Whiskey Creek and Whiskey Creek springs, tributaries of the Sprague River; being .01 cfs for domestic use, and 16.24 cfs for irrigation of 724.7 acres with incidental livestock watering of 1200 head. The claimed period of use is April 1 to November 15 for irrigation. The claimed priority date is October 14, 1864.
3. WILLIAM L. GALLAGHER signed Claim 128 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 longer seasons of use than claimed.
5. On April 28, 2000, the Claimants timely filed Contest 37 to the Preliminary Evaluation of Claim 128.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3503: 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 3769 to the Claim and Preliminary Evaluation of Claim 128.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4157 to the Claim and Preliminary Evaluation of Claim 128.
9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2846 to the Claim and/or Preliminary Evaluation of Claim 128.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 235.
11. On May 20, 2003, WaterWatch’s Contest 2846 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.’S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
12. On February 2, 2005, the Klamath Tribes withdrew Contest 4157. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (Feb. 2, 2005).
13. On October 26, 2005, the Claimants, OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 128.
14. On October 31, 2005, the Adjudicator withdrew Case 235 from the Office of Administrative Hearings.

B. DETERMINATION

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

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3503 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3503 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3503 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. 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 128 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 128
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 128 SETTLEMENT MAP (October 8, 2005)

CLAIMANT: WHISKEY CREEK RANCH
WILLIAM L. GALLAGHER
PO BOX 309
BEATTY, OR 97621

SOURCE OF WATER:

WHISKEY CREEK, tributary to the SPRAGUE RIVER,
WHISKEY CREEK SPRINGS, tributary to WHISKEY CREEK,
MODOC BILLY CREEK, tributary to WHISKEY CREEK,
An UNNAMED SPRING, tributary to WHISKEY CREEK, and
LOLA-K-WAST SPRING, tributary to WHISKEY CREEK

PURPOSE OR USE: IRRIGATION OF 619.4 ACRES.

RATE OF USE MEASURED AT THE POINT OF DIVERSION IS AS FOLLOWS:

POD Name(s)	Rate (CFS)	Authorized Place of Use	Authorized Number of Acres
POD 1	3.09	Areas # 1 and # 2	123.7
POD 2	2.04	Area # 3	81.7
POD 3	3.20	Area # 4	232.1
POD 4	0.52	Area # 5	20.7
POD 5	1.00	Area # 6	45.8
POD 6	1.73	Area # 10	69.2
POD 1 and/or POD 5	0.17	Area # 7	6.7
POD 1 and/or POD 3	0.56	Area # 8	22.2
POD 3 and/or POD 4	0.43	Area # 9	17.3
TOTALS for WATER RIGHT	12.74 CFS		619.4 Acres

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: APRIL 1 - NOVEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Source(s)	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	Whiskey Creek and Whiskey Creek Springs	36 S	12 E	WM	30	SE SW	
POD 2	Modoc Billy Creek	36 S	12 E	WM	30	NE NW	
POD 3	Modoc Billy Creek	36 S	11 E	WM	36	NE SE	
POD 4	Unnamed Spring	37 S	11 E	WM	1	NW NE	2
POD 5	Lola-K-Wast Spring	36 S	12 E	WM	30	SW NE	
POD 6	Whiskey Creek and Whiskey Creek Springs	36 S	12 E	WM	31	SW NW	2

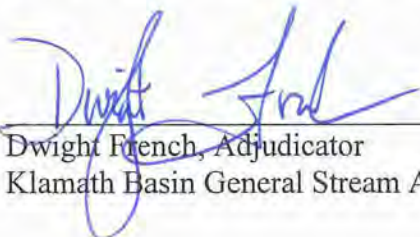
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized Place of Use Area #	Authorized POD
36 S	11 E	WM	25	NE SE		31.4	Area # 2	POD 1
36 S	11 E	WM	25	NW SE		25.4	Area # 2	POD 1
36 S	11 E	WM	25	SW SE		20.5	Area # 2	POD 1
36 S	11 E	WM	25	SW SE		0.6	Area # 4	POD 3
36 S	11 E	WM	25	SW SE		14.9	Area # 8	POD 1 and/or POD 3
36 S	11 E	WM	25	SE SE		6.5	Area # 2	POD 1
36 S	11 E	WM	25	SE SE		1.9	Area # 8	POD 1 and/or POD 3
36 S	11 E	WM	36	NE NE		26.1	Area # 4	POD 3
36 S	11 E	WM	36	NW NE		12.0	Area # 4	POD 3
36 S	11 E	WM	36	NW NE		5.4	Area # 8	POD 1 and/or POD 3
36 S	11 E	WM	36	SW NE		0.3	Area # 4	POD 3
36 S	11 E	WM	36	SE NE		29.7	Area # 4	POD 3
36 S	11 E	WM	36	SE NE		5.9	Area # 9	POD 3 and/or POD 4
36 S	11 E	WM	36	NE SE		15.6	Area # 4	POD 3
36 S	11 E	WM	36	NE SE		7.2	Area # 5	POD 4
36 S	11 E	WM	36	NE SE		11.4	Area # 9	POD 3 and/or POD 4
36 S	11 E	WM	36	SE SE		2.0	Area # 4	POD 3
36 S	11 E	WM	36	SE SE		13.5	Area # 5	POD 4
36 S	12 E	WM	30	SW NE		13.8	Area # 6	POD 5
36 S	12 E	WM	30	SW NE		1.4	Area # 7	POD 1 and/or POD 5
36 S	12 E	WM	30	NW NW	1	37.2	Area # 3	POD 2
36 S	12 E	WM	30	SW NW	2	44.5	Area # 3	POD 2
36 S	12 E	WM	30	NE SW		26.6	Area # 1	POD 1
36 S	12 E	WM	30	NE SW		1.8	Area # 4	POD 3
36 S	12 E	WM	30	NW SW	3	44.4	Area # 4	POD 3
36 S	12 E	WM	30	SW SW	4	44.5	Area # 4	POD 3
36 S	12 E	WM	30	SE SW		13.3	Area # 1	POD 1
36 S	12 E	WM	30	SE SW		7.2	Area # 4	POD 3
36 S	12 E	WM	30	NW SE		32.0	Area # 6	POD 5

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized Place of Use Area #	Authorized POD
36 S	12 E	WM	30	NW SE		5.3	Area # 7	POD 1 and/or POD 5
36 S	12 E	WM	30	SW SE		36.3	Area # 10	POD 6
36 S	12 E	WM	30	SE SE		6.1	Area # 10	POD 6
36 S	12 E	WM	31	NW NE		5.5	Area # 10	POD 6
36 S	12 E	WM	31	NE NW		4.1	Area # 4	POD 3
36 S	12 E	WM	31	NE NW		21.1	Area # 10	POD 6
36 S	12 E	WM	31	NW NW		43.8	Area # 4	POD 3
36 S	12 E	WM	31	NW NW		0.2	Area # 10	POD 6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication