

**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      |
| PIERRE A. KERN                | ) | DETERMINATION         |
|                               | ) |                       |
| _____                         | ) | Water Right Claim 129 |

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 7, 1990, TOTTISIE W. J. LORENZ *ET AL.* timely submitted a Statement and Proof of Claim (Claim 129) 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 129 was submitted for a total of 6.02 cfs of water from Fivemile Creek, a tributary of the North Fork Sprague River, for irrigation of 246.9 acres with incidental livestock watering of approximately 355 head. The claimed period of use is April 1 to November 1. The claimed priority date is "1864."
3. TOTTISIE W. J. LORENZ signed Claim 129 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 129 was transferred to PIERRE A. KERN (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M93, PAGE 1199 (Jan. 15, 1993) (Claim # 129, Pages 22-24).
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 denied because "the claim is for a source which has been previously adjudicated."
6. On May 8, 2000, the Claimant timely filed Contest 3108 to the Preliminary Evaluation of Claim 129.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3504: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3770 to the Claim and Preliminary Evaluation of Claim 129.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4158 to the Claim and Preliminary Evaluation of Claim 129.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 236.
11. On May 6, 2003, Claim 129 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
12. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
13. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 12, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
14. On April 15, 2005, the Klamath Tribes withdrew Contest 4158. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (April 15, 2005).

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3504 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3504 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3504 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On February 16, 2006, the Claimant, 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 129.
16. On March 2, 2006, the Adjudicator withdrew Case 236 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the 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. 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 129 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 129**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 129 SETTLEMENT MAP (Mar. 3, 2006)

**CLAIMANT:** PIERRE A. KERN  
2730 AVENIDA CABALLO  
SANTA YNEZ, CA 93460

**SOURCE OF WATER:** FIVEMILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

**PURPOSE OR USE:** IRRIGATION OF 150.0 ACRES.

**RATE OF USE:**  
3.75 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT 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:** APRIL 1 - NOVEMBER 1

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

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**


| Twp  | Rng  | Mer | Sec | Q-Q   | Measured Distances   |
|------|------|-----|-----|-------|--|
| 36 S | 13 E | WM  | 7   | NW NW | SOUTH 51 DEGREES 10 MINUTES EAST, 285 FEET FROM NW CORNER, SECTION 7 |

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

| IRRIGATION |      |     |     |       |       |
|------------|------|-----|-----|-------|-------|
| Twp        | Rng  | Mer | Sec | Q-Q   | Acres |
| 36 S       | 13 E | WM  | 13  | NE NE | 0.7   |
| 36 S       | 13 E | WM  | 13  | SW NE | 31.7  |
| 36 S       | 13 E | WM  | 13  | SE NE | 35.9  |
| 36 S       | 13 E | WM  | 13  | NE NW | 0.7   |
| 36 S       | 13 E | WM  | 13  | NE SE | 40.0  |
| 36 S       | 13 E | WM  | 13  | SE SE | 40.0  |
| 36 S       | 13 E | WM  | 24  | NE NE | 1.0   |

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication