

**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
CAMERON A. CURTISS)	DETERMINATION
)	
_____)	Water Right Claim 133

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 AMENDED PROPOSED ORDER**

1. Claim 133 (Claimant: CAMERON A. CURTISS) and its associated contests (2849, 3131, 3394, and 4161) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 112.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an AMENDED PROPOSED ORDER¹ (Amended Proposed Order) for Claim 133 on October 15, 2003.
3. Exceptions were filed to the Amended Proposed Order within the exceptions filing deadline by (1) Cameron A. Curtiss, (2) the United States of America, and (3) the Klamath Tribes.
4. The exceptions filed to the Amended Proposed Order along with any opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 133. Except for the item addressed in Section A.7.a., below, the exceptions filed to the Amended Proposed Order for Claim 133 are found to be unpersuasive.
5. The Amended Proposed Order is adopted and incorporated as if set forth fully herein, with the following three exceptions: (1) the section titled "Conclusions of Law" is adopted in its entirety except as modified under Finding of Fact A.6, below, (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, below, and (3) the section titled "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 133. Except as identified in Section A.8, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

¹ This Amended Proposed Order corrected a typographical error in the Proposed Order issued September 30, 2003.

6. **Conclusions of Law.** Within the section titled “Conclusions of Law” of the Amended Proposed Order the following modifications are made:

a. The third conclusion of law is corrected as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

“The irrigation season regarding this pre-1909 water right runs from
~~April~~ March 1 to September 30 of each year.

Reason for Modification: To correct an error. The “Order” section of the Amended Proposed Order recommends that the Adjudicator order that the season of use be March 1 – September 30 of each year. This recommendation is consistent with the Opinion in the Amended Proposed Order, which in the “Season of Use and Priority Date” subsection explains that when Mr. Curtiss filled out his Statement of Proof of Claim he was asked the question “When does the irrigation season begin and end[,]” and that he answered “March – September.” Modifying the third Conclusion of Law as set forth above corrects the inconsistency between the “Opinion” and “Order” sections of the Amended Proposed Order and the “Conclusions of Law” section and is supported by the evidence.

7. **Opinion.** Within the section titled “Opinion” of the Amended Proposed Order the following modifications are made:

a. The first line of the quote on page 8 (subsection ‘Continuity of Use’) is corrected as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

“The Alexander Ranch (formerly known as the Doak Ranch) has been
irrigated from [Rock Creek] since ~~1998~~ 1887.” (Claimant’s Ex. 4.)

Reason for Modification: To correct a scrivener’s error - raised in exceptions.

b. The last paragraph of the opinion section is modified as follows (additions are shown in “underline” text):

No participant actively contested or presented evidence on the appropriate rate, duty, or season regarding Mr. Curtiss’ livestock watering. Appendix A is the only evidence regarding the appropriate season (year round), or rate (twelve gallons per day per head for non-dairy livestock. The evidence shows that Mr. Curtiss’ waters 2,500 head of livestock from his irrigation and drainage ditches at a rate of 0.05 cfs (OWRD Ex. 1 at 83, 88.) This amount may be added to his

rate, but does not affect his duty. The record supports the claimed year around season of use for livestock watering.

Reason for Modification: Although the Amended Proposed Order states that no participant actively contested or presented evidence on the appropriate rate, duty, or season regarding Mr. Curtiss' livestock watering, the recommendation under the "Order" section of the Amended Proposed Order listed the period of use as March 1 to September 30 of each year. (Amended Proposed Order at 12.) This oversight is corrected to include a period of use for livestock watering of January 1 – December 31. This is consistent with the "year round" season of use for livestock watering claimed for Claim 133.

8. **Order.** Within the section titled "Order" of the Amended Proposed Order, the Place of Use for the 6.4 acres listed within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, Township 36 South, Range 7 East, W.M. is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

~~LOT 4~~ LOT 6 SE $\frac{1}{4}$ SE $\frac{1}{4}$ 6.4 ACRES IRRIGATION AND LIVESTOCK

Reason for Modification: To correct an error. OWRD finds that the 6.4 acres listed within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, Township 36 South, Range 7 East, W.M. are located within Government Lot 6; these acres were incorrectly identified as being within Government Lot 4. (OWRD Ex. 1 at 106.)

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated as if set forth fully herein, with the following three exceptions: (1) the section titled "Conclusions of Law" is adopted in its entirety except as modified under Finding of Fact A.6, above, (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, above, and (3) the section titled "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 133. Except as identified in Section A.8, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a pre-1909 claim are established regarding Rock Creek (Denny Creek).
3. The elements of a pre-1909 claim are not established regarding Upper Klamath Lake.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

5. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water, and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
6. Based on the file and record herein, IT IS ORDERED that Claim 133 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 133

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 7 E / T 37 S, R 7 E

CLAIMANT: CAMERON A. CURTISS
21051 HWY 140 WEST
KLAMATH FALLS OR 97601

SOURCE OF WATER: ROCK CREEK (DENNY CREEK), tributary to KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 936.6 ACRES; LIVESTOCK WATERING OF 2,500 HEAD.

RATE OF USE:

13.550 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

13.5 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.05 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 30,000 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACES OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - September 30
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: JANUARY 25, 1909

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
37 S	7 E	WM	9	NW SE

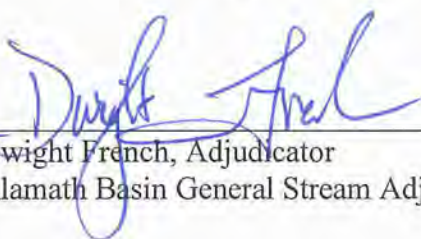
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	7 E	WM	32	NE SE	7	15.6
36 S	7 E	WM	32	SE SE	6	6.4
36 S	7 E	WM	33	SW NE	4	16.0
36 S	7 E	WM	33	SW NE	2	2.0
36 S	7 E	WM	33	SE NE	4	2.4
36 S	7 E	WM	33	SE NE	2	1.0
36 S	7 E	WM	33	SE NW	7	11.8
36 S	7 E	WM	33	NE SW		40.0
36 S	7 E	WM	33	NW SW		34.4
36 S	7 E	WM	33	SW SW		39.8
36 S	7 E	WM	33	SE SW		40.0
36 S	7 E	WM	33	NE SE	3	36.0
36 S	7 E	WM	33	NW SE		40.0
36 S	7 E	WM	33	SW SE		40.0
36 S	7 E	WM	33	SE SE		40.0
36 S	7 E	WM	34	NE SW		0.6
36 S	7 E	WM	34	NW SW	1	6.5
36 S	7 E	WM	34	NW SW	12	4.3
36 S	7 E	WM	34	SW SW	2	22.4
36 S	7 E	WM	34	SW SW	11	15.3
36 S	7 E	WM	34	SE SW		1.4
37 S	7 E	WM	3	NW NW		30.4
37 S	7 E	WM	3	NW NW	3	0.2
37 S	7 E	WM	4	NE NE	11	32.0
37 S	7 E	WM	4	NE NE	4	8.0
37 S	7 E	WM	4	NW NE		40.0
37 S	7 E	WM	4	SW NE	10	40.0
37 S	7 E	WM	4	SE NE	10	9.9
37 S	7 E	WM	4	SE NE	5	19.7
37 S	7 E	WM	4	NE NW		40.0
37 S	7 E	WM	4	NW NW	12	28.4
37 S	7 E	WM	4	SW NW	12	10.8
37 S	7 E	WM	4	SE NW		39.1
37 S	7 E	WM	4	NE SW	13	37.0
37 S	7 E	WM	4	NW SW	13	1.2
37 S	7 E	WM	4	SW SW	14	2.0
37 S	7 E	WM	4	SE SW	14	38.6
37 S	7 E	WM	4	NE SE	6	2.8
37 S	7 E	WM	4	NW SE	6	4.7

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
37 S	7 E	WM	4	NW SE	9	26.1
37 S	7 E	WM	4	SW SE	8	17.4
37 S	7 E	WM	4	SW SE	7	5.6
37 S	7 E	WM	9	NW NE	5	3.0
37 S	7 E	WM	9	NW NE	6	17.4
37 S	7 E	WM	9	SW NE	7	6.0
37 S	7 E	WM	9	SW NE	4	9.8
37 S	7 E	WM	9	NE NW	9	35.8
37 S	7 E	WM	9	SE NW	8	12.8
37 S	7 E	WM	9	NW SE		2.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication