

**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
ROBERT BUCHANAN	)	DETERMINATION
	)	
_____	)	Water Right Claim 135

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 135 (Claimant: ROBERT BUCHANAN) and its associated contests (3133, 3396, 3822, 4163) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 114.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 135 on July 30, 2003.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the United States of America and (2) the Klamath Tribes.
4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 135 and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. The Proposed Order as it pertains to Claim 135 is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The "History of the Case" adopted in its entirety.
  - b. The "Evidentiary Rulings" adopted in its entirety.
  - c. The "Issues" is adopted in its entirety.
  - d. The "Findings of Fact" adopted in its entirety.
  - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.6, below.
  - f. The "Opinion" is adopted with modifications, as set forth in Section A.7, below.

- g. The “Summary” is adopted in its entirety.
- h. 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 135. 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.

6. **Conclusions of Law.**

- a. Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #3 is modified as follows (deletions are shown in “~~striketrough~~” text):

The record supports the rate, duty, actual use, points of diversion, ~~seasonal limitations~~, and/or acreage stated in the Preliminary evaluation of Claims 135 and 136.

- b. Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #6 is modified as follows (additions are shown in “underline” text):

The period of use for irrigation in the preliminary evaluation exceeds the period of use claimed in Claims 135 and 136. The record supports a period of use April 1 to November 1 for irrigation and year around for livestock watering, as claimed.

**Reason for Modifications:** Conclusion of Law #6 of the Proposed Order states: “[t]he period of use for irrigation in the preliminary evaluation exceeds the period of use claimed in Claim 135 and 136.” (Proposed Order at 5.) However, the recommendation contained within the section titled “Order” states: “[t]he claim shall be as stated in the Preliminary Evaluation [P.E.]” except for the priority date.” (Proposed Order at 8.) The P.E. approved an irrigation season of March 1 – October 31. The claimed season of use is April 1 to November 1. The season of use listed in the P.E. exceeds the claimed irrigation season. Thus, Conclusions of Law #3 and #6 are modified to confirm the irrigation season of use to that which was claimed, being April 1 to November 1.

- 7. **Opinion.** Within the section titled “Opinion” of the Proposed Order, the following sentence (shown in “underline” text) is added to the first paragraph:

One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the “proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land\*\*\*.” *In re Silvies River*, 115 Or 27, 66 (1925).

**Reason for Modification:** To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right.

8. **Order.** The following portion pertaining to Claim 135 of the section titled “Order” of the Proposed Order is modified as follows (additions are shown in “underline” text):

Claim 135:

The claim shall be as stated in the Preliminary Evaluation, except as follows:

PRIORITY DATE: May 25, 1908.

SEASON OF USE: April 1 to November 1.

**Reason for Modification:** To provide consistency with Findings of Fact 6, above.

## B. DETERMINATION

1. The Proposed Order as it pertains to Claim 135 is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of the Case” adopted in its entirety.
  - b. The “Evidentiary Rulings” adopted in its entirety.
  - c. The “Issues” is adopted in its entirety.
  - d. The “Findings of Fact” adopted in its entirety.
  - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.6, above.
  - f. The “Opinion” is adopted with modifications, as set forth in Section A.7, above.
  - g. The “Summary” is adopted in its entirety.
  - h. 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 135. 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. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 135 is approved as set forth in the following Water Right Claim Description.

**CLAIM NO. 135**

**CLAIM MAP REFERENCE:** CLAIM # 135, PAGE 41

**CLAIMANT:** ROBERT BUCHANAN  
13490 ALGOMA ROAD  
KLAMATH FALLS, OR 97601

**SOURCE OF WATER:** UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER

**PURPOSE OR USE:**  
IRRIGATION OF 78.0 ACRES

**RATE OF USE:**  
1.74 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:**  
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

**PERIOD OF ALLOWED USE:** APRIL 1 - NOVEMBER 1

**DATE OF PRIORITY:** MAY 25, 1908

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

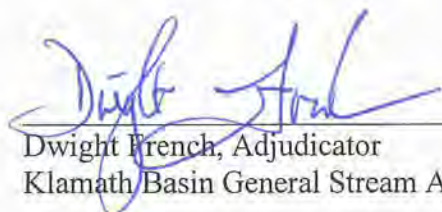
Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	8 E	WM	13	SW NE	2	1725 FEET SOUTH AND 2400 FEET WEST FROM NE CORNER, SECTION 13

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

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	9 E	WM	7	NW SE	39.0
37 S	9 E	WM	7	SW SE	39.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication