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 DOROTHY BUCHANAN, GLENDA J. BUCHANAN, ROBERT BUCHANAN, LEWIS HAGELSTEIN, RUTH HAGELSTEIN, AND C. MARIE SUITER	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 136

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 136 (Claimants: DOROTHY BUCHANAN, GLENDA J. BUCHANAN, ROBERT BUCHANAN, LEWIS HAGELSTEIN, RUTH HAGELSTEIN, AND C. MARIE SUITER) and its associated contests (3134, 3397, 2823, and 4164) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 115.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 136 on July 30, 2003.

3. Exceptions were filed to the Proposed Order by the Klamath Tribes which adopted by reference the United States' Exceptions to the Proposed Order. The United States did not file exceptions to the Proposed Order for Claim 136, thus the Klamath Tribes' exceptions are moot.

4. The Proposed Order as it pertains to Claim 136 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 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.5, below.

f. The "Opinion" is adopted with modifications, as set forth in Section A.6, 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 136. Except as identified in Section A.7, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

5. **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 "~~strikethrough~~" 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 "Order" section 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.

6. **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.

7. **Order.** The following portion pertaining to Claim 136 of the section titled "Order" of the Proposed Order is modified as follows (additions are shown in "underline" text):

Claim 136:

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 Section A.5, above.

B. DETERMINATION

1. The Proposed Order as it pertains to Claim 136 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 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.5, above.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.6, 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 136. Except as identified in Section A.7, 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 136 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 136

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 37 S, R 8 E and T 37 S, R 9 E

CLAIMANT: DOROTHY BUCHANAN
GLENDA J. BUCHANAN
ROBERT BUCHANAN
LEWIS HAGELSTEIN
RUTH HAGELSTEIN
C. MARIE SUITER
13851 ALGOMA RD
KLAMATH FALLS, OR 97601

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

PURPOSE OR USE:

IRRIGATION OF 305.4 ACRES, BEING 227.2 ACRES FROM POD 1, AND 78.2 ACRES FROM POD 2; AND LIVESTOCK WATERING OF 300 HEAD

RATE OF USE:

4.6456 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION AS FOLLOWS:

4.64 CFS FOR IRRIGATION, BEING 2.68 FROM POD 1 AND 1.96 FROM POD 2; AND

0.0056 CFS FOR LIVESTOCK WATERING NOT TO EXCEED 3600 GALLONS PER DAY

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:

Use	Period
Irrigation	April 1 - November 1
Livestock	January 1 - December 31

DATE OF PRIORITY: MAY 25, 1908

THE POINTS OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	37 S	9 E	WM	18	SE NW		1500 FEET SOUTH AND 500 FEET WEST FROM N1/4 CORNER, SECTION 18
POD 2	37 S	8 E	WM	13	SW NE	2	2950 FEET NORTH AND 2400 FEET WEST FROM SE CORNER, SECTION 13

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
37 S	8 E	WM	13	SW NE	2	14.6	POD 2
37 S	8 E	WM	13	SE NE		19.4	
37 S	8 E	WM	13	NE SE		18.8	
37 S	8 E	WM	13	NW SE	3	25.4	
37 S	8 E	WM	13	NE SE		15.0	POD 1
37 S	8 E	WM	13	NW SE	3	3.0	
37 S	9 E	WM	17	SW NW		20.1	
37 S	9 E	WM	18	SW NE		6.5	
37 S	9 E	WM	18	SE NE		18.9	
37 S	9 E	WM	18	SW NW	2	28.0	
37 S	9 E	WM	18	SE NW		32.6	
37 S	9 E	WM	18	NE SW		36.6	
37 S	9 E	WM	18	NW SW	3	31.1	
37 S	9 E	WM	18	SE SW		6.0	
37 S	9 E	WM	18	NW SE		11.9	
37 S	9 E	WM	18	SW SE		17.5	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication