

**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
MARTA C. CARPENTER	)	DETERMINATION
	)	
_____	)	Water Right Claim 143

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 143 (Claimant: MARTA C. CARPENTER) and its associated contests ( 3137, 3827, and 4168) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 119, and subsequently consolidated with Case 3. The consolidation with Case 3 was reversed by INTERIM ORDER (Jan 12, 2006) at 31.<sup>1</sup>
2. On August 8, 2007, the Claimant, OWRD, and the United States of America executed a Stipulation to Resolve Contest (Settlement Agreement) thereby resolving the all matters with the exception of diversion rate. The Settlement Agreement resolved the source of water, location of the point of diversion, use of water, duty of water, period of use, priority dates, and the place of use for irrigation and livestock watering. The Settlement Agreement did not specify a diversion rate; however, it did define the upper and lower limits for the rate of diversion.
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 143 on November 20, 2007.
4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Marta C. Carpenter, and (2) Medford Irrigation District and Rogue River Valley Irrigation District.

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<sup>1</sup> This Interim Order was amended by an AMENDED INTERIM ORDER (May 24, 2006) issued *sua sponte* by the Administrative Law Judge to provide clarification of certain matters raised in correspondence and to correct typographical errors noted since the original order was issued.

5. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 143. Except for the items addressed in Sections A.7, and A.8, and A.9, below, the exceptions filed to the Proposed Order for Claim 143 are found to be unpersuasive.
6. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of Consolidated Cases 118, 119, and 120” is adopted in its entirety.
  - b. The “History of Case 119” is adopted with modifications, as set forth in Section A.7, below.
  - c. The “Evidentiary Rulings” is adopted in its entirety.
  - d. The “Issue” is adopted in its entirety.
  - e. The “Findings of Fact,” is adopted with modifications, as set forth in Section A.8.a, below. In addition, Proposed Order Finding of Fact 10 is added as set forth in Section A.8.b, below.
  - f. The “Conclusions of Law” is adopted in its entirety.
  - g. The “Opinion” 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 143. Except as identified in Section A.9, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

7. **History of Case 119.** Within the section titled “History of Case 119” of the Proposed Order the following modifications are made (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

- a. The last sentence within the first Paragraph is modified as follows:

As a result of the divorce, Claimant became the sole owner of the property, ~~and was the sole claimant in Case 119 until the property was purchased by Jeld-Wen.~~

- b. The second and third sentences within Paragraph 6 are modified as follows:

Attorney David ~~Filipi~~ Filippi represented Claimant, Marta C. Carpenter, and successor in interest, Jeld-Win. Attorney ~~Andrew Hitchings~~ Steven L. Shropshire represented Rogue River Irrigation District and Medford Irrigation District.

**Reasons for Modifications:** To make corrections raised in exceptions; the ALJ’s statement that Jeld-Wen is a successor in interest is not supported by a preponderance of the evidence; to correct a scrivener’s error in the last name Filippi.

8. **Findings of Fact.**

- a. The last sentence in Proposed Order Finding of Fact #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~striketrough~~" text):

As a result of the divorce, Claimant became the sole owner of the property, ~~and was the sole claimant in Case 119 until the property was purchased by Jeld-Wen.~~

**Reason for Modification:** To make corrections raised in exceptions; the ALJ's finding that Jeld-Wen purchased the property is not supported by a preponderance of the evidence.

- b. Proposed Order Finding of Fact #10 is added as follows (additions are shown in "underline" text):

10. Because there is no evidence on the record to the contrary, the standard rate for irrigation is 1/40 of one cubic foot per second per acre as outlined in Appendix A of the Preliminary Evaluation of Claims (OWRD Ex. 1 at 92) and the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Proposed Order Finding of Fact #10 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard rate for irrigation.

**Reason for Additional Finding of Fact:** To include a finding regarding a standard rate for irrigation based on the number of acres that should be irrigated with one cubic foot of water per second.

9. **Order.** Within the section titled "Order" of the Proposed Order, the diversion rate of 8.47 cfs of irrigation is further clarified as follows (additions are shown in "underline" text):

The diversion rate for the 439 acres with a December 31, 1989 priority date is 7.0 cfs and the diversion rate for the 58.9 acres with a December 31, 1907 priority date is 1.47 cfs.

**Reason for Modification:** To add clarification using evidence on the record.

## B. DETERMINATION

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

2. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of Consolidated Cases 118, 119, and 120” is adopted in its entirety.
  - b. The “History of Case 119” is adopted with modifications, as set forth in Section A.7, above.
  - c. The “Evidentiary Rulings” is adopted in its entirety.
  - d. The “Issue” is adopted in its entirety.
  - e. The “Findings of Fact,” is adopted with modifications, as set forth in Section A.8.a, above. In addition, Proposed Order Finding of Fact 10 is added as set forth in Section A.8.b, above.
  - f. The “Conclusions of Law” is adopted in its entirety.
  - g. The “Opinion” 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 143. Except as identified in Section A.9, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
  
3. 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.
  
4. Based on the file and record herein, IT IS ORDERED that Claim 143 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO.** 143

**CLAIM MAP REFERENCE:** SETTLEMENT MAP (AUG. 23, 2007)

**CLAIMANT:** MARTA C. CARPENTER  
 PO BOX 1810  
 KLAMATH FALLS, OR 97601

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

**PURPOSE OR USE:**  
 IRRIGATION OF 497.9 ACRES AND LIVESTOCK WATERING OF 500 HEAD

**RATE OF USE:**  
 8.4793 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

8.47 CFS FOR IRRIGATION OF 497.9 ACRES MEASURED AT THE POINT OF DIVERSION, BEING 7.0 CFS FOR IRRIGATION OF 439.0 ACRES, AND 1.47 CFS FOR IRRIGATION OF 58.9 ACRES, AND

0.0093 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 6000 GALLONS PER DAY.

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.

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:** JANUARY 1 - DECEMBER 31

**DATES OF PRIORITY:**

DECEMBER 31, 1889: LIVESTOCK WATERING AND IRRIGATION OF 439.0 ACRES (AS LISTED BELOW) FOR A TOTAL OF 7.00 CFS OF WATER

DECEMBER 31, 1907: LIVESTOCK WATERING AND IRRIGATION OF 58.9 ACRES (AS LISTED BELOW) FOR A TOTAL OF 1.47 CFS OF WATER

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

Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	8 E	WM	14	SW NW	2

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

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Priority Date
38 S	8 E	WM	14	SW NW	3	22.6	DECEMBER 31, 1889
38 S	8 E	WM	14	SE NW	4	3.9	
38 S	8 E	WM	14	SE NW		1.7	
38 S	8 E	WM	14	NE SW	5	20.0	
38 S	8 E	WM	14	NE SW		7.6	
38 S	8 E	WM	14	NW SW		40.0	
38 S	8 E	WM	14	SW SW		40.0	
38 S	8 E	WM	14	SE SW		2.1	
38 S	8 E	WM	14	SE SW	6	36.8	
38 S	8 E	WM	14	SW SE		1.5	
38 S	8 E	WM	15	SE NE	6	7.0	
38 S	8 E	WM	15	NE SE		40.0	
38 S	8 E	WM	15	NW SE	7	16.2	
38 S	8 E	WM	15	SW SE	8	0.4	
38 S	8 E	WM	15	SW SE	5	1.5	
38 S	8 E	WM	15	SE SE	8	31.1	
38 S	8 E	WM	22	NE NE	9	1.3	
38 S	8 E	WM	23	NW NE	8	13.1	
38 S	8 E	WM	23	SW NE	7	9.6	
38 S	8 E	WM	23	NE NW		40.0	
38 S	8 E	WM	23	NW NW	9	34.4	
38 S	8 E	WM	23	SW NW	9	24.9	
38 S	8 E	WM	23	SW NW	1	2.4	
38 S	8 E	WM	23	SE NW	10	39.7	
38 S	8 E	WM	23	NE SW	2	1.2	


IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Priority Date
38 S	8 E	WM	14	NW NW	1	1.4	DECEMBER 31, 1907
38 S	8 E	WM	14	SW NW	2	13.5	
38 S	8 E	WM	15	NE NE		4.0	
38 S	8 E	WM	15	SW NE		5.7	
38 S	8 E	WM	15	SE NE	1	31.9	
38 S	8 E	WM	15	NW SE	2	2.4	

**FURTHER LIMITATIONS:**

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication