

**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
CHRIS DOBSON, AND	)	DETERMINATION
STEPHEN KUHLER	)	
_____	)	
	)	Water Right Claim 178

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 178 (Claimants: CHRIS DOBSON AND STEPHEN KUHLER) and its associated contests (3168, 3833, and 4175) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 125.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 178 on December 8, 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 178, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. The Proposed Order 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 Proposed Order's "Findings of Fact," is adopted in its entirety. In addition, Proposed Order Finding of Fact 9 is added as set forth in Section A.6, below.

- e. The “Conclusions of Law” is adopted in its entirety.
  - f. The “Opinion” is adopted with modifications, as set forth in Section A.7, below.
  - g. 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 178. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
6. **Findings of Fact.** Proposed Order Finding of Fact #9 is added as follows (additions are shown in “underline” text):

(9) Because there is no evidence on the record to the contrary, the standard duty for irrigation is 3.5 acre-feet per acre as outlined in Appendix A of the Preliminary Evaluation of Claims (OWRD Ex. 1 at 100) and the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Proposed Order Finding of Fact #9 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard duty for irrigation.

**Reason for Additional Finding of Fact:** To include a finding regarding the duty for irrigation.

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.

## B. DETERMINATION

1. The Proposed Order 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 Proposed Order’s “Findings of Fact,” is adopted in its entirety. In addition, Proposed Order Finding of Fact 9 is added as set forth in Section A.6, above.

- e. The “Conclusions of Law” is adopted in its entirety.
  - f. The “Opinion” is adopted with modifications, as set forth in Section A.7, above.
  - g. 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 178. 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 178 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 178**

**CLAIM MAP REFERENCE:** OWRD INVESTIGATION MAP – T 39 S, R 8 E

**CLAIMANT:** CHRIS DOBSON  
STEPHEN KUHLER  
7 FOURTH ST, SUITE 25  
PETALUMA, CA 94952

**SOURCE OF WATER:** The KLAMATH RIVER, tributary to the PACIFIC OCEAN

**PURPOSE OR USE:**

IRRIGATION OF 266.4 ACRES AND LIVESTOCK WATERING OF 150 HEAD

**RATE OF USE:**

6.6635 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0035 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2250 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.

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 - October 31
Livestock Watering	April 1 - October 31

**DATE OF PRIORITY:** JUNE 21, 1906

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

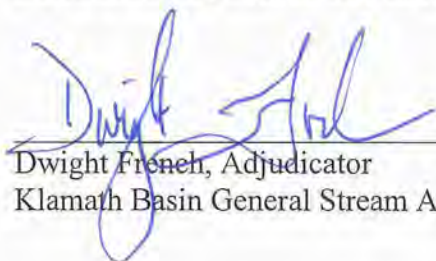
Twp	Rng	Mer	Sec	Q-Q	GLot
39 S	8 E	WM	34	NE NE	1

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

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	8 E	WM	27	SW NE		2.6
39 S	8 E	WM	27	NW SE		34.7
39 S	8 E	WM	27	SW SE	3	36.8
39 S	8 E	WM	27	SW SE	5	2.5
39 S	8 E	WM	27	SE SE	4	34.9
39 S	8 E	WM	34	NE NE	1	25.0
39 S	8 E	WM	34	NW NE	1	5.5
39 S	8 E	WM	34	NW NE	8	22.9
39 S	8 E	WM	34	SW NE	7	29.9
39 S	8 E	WM	34	SE NE	2	20.5
39 S	8 E	WM	34	SE NE	6	11.5
39 S	8 E	WM	34	NE SE	3	1.2
39 S	8 E	WM	34	NE SE	5	23.1
39 S	8 E	WM	34	NW SE	12	3.5
39 S	8 E	WM	34	SE SE	4	11.2
39 S	8 E	WM	35	SW SW	1	0.6

[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