

**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 the)	PARTIAL ORDER OF
UNITED STATES DEPARTMENT OF)	DETERMINATION
INTERIOR, BUREAU OF LAND)	
MANAGEMENT)	
_____)	Water Right Claim 198
)	

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. On January 30, 1991, JOHN M. AND MARILYN MOSBY timely submitted a Statement and Proof of Claim (Claim 198) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 198 was submitted for a total 3.98 cubic feet per second (cfs) of water from Jenny Creek, a tributary of the Klamath River, for irrigation of 220 acres with incidental livestock watering, and with a season of use April to October. The claimed priority date is "beneficial use of water since 1890."
3. JOHN M. MOSBY AND MARILYN MOSBY signed the Statement and Proof of Claim for Claim 198 attesting that the information contained in the claim is true.
4. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 198 (Claim 198, WIP Page 00019).
5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres than claimed and with a longer season of use than claimed.
6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3186 to the Claim and/or Preliminary Evaluation of Claim 198.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3409: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.¹, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard², Don Vincent³, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
8. On May 8, 2000, the United States of America timely filed Contest 3840 to the Claim and/or Preliminary Evaluation of Claim 198.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4182 to the Claim and/or Preliminary Evaluation of Claim 198.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 131.
11. On December 23, 2002, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contest 3186. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT (Dec. 23, 2002).
12. On February 13, 2003, the Klamath Tribes voluntarily withdrew Contest 4182, the remaining contest to Claim 198. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (Feb. 13, 2003).
13. On April 14, 2003, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3186. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (April 14, 2003).
14. On June 30, 2003, the claim was transferred to the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT (BLM) (Claimant). *See* CHANGE OF OWNERSHIP FORM (June 30, 2003).
15. On September 15, 2003, the United States of America withdrew Contest 3840. *See* WITHDRAWAL OF CONTEST BY UNITED STATES OF AMERICA (Sept. 15, 2003).

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3409 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3409 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3409 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

16. On May 7, 2004, OWRD, the Claimant (BLM), and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving all remaining contests to Claim 198.
17. On May 12, 2004, the Adjudicator withdrew Case 131 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant (BLM), and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
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. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
4. Based on the file and record herein, IT IS ORDERED that Claim 198 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 198

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 4 E

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
3040 BIDDLE RD
MEDFORD, OR 97504

SOURCE OF WATER: JENNY CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE:

IRRIGATION OF 209 ACRES WITH INCIDENTAL LIVESTOCK WATERING, BEING 140.0 ACRES IRRIGATED FROM POD 1 AND 69.0 ACRES IRRIGATED FROM POD 2.

RATE OF USE:

3.98 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 2.67 CFS FROM POD 1 AND 1.31 CFS FROM POD 2.

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 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1890

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:


POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	40 S	4 E	WM	16	NE SW
POD 2	40 S	4 E	WM	16	SE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation with Incidental Livestock Watering						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
40 S	4 E	WM	22	NE NW	0.5	POD 1
40 S	4 E	WM	22	NW NW	17.6	
40 S	4 E	WM	22	NW SW	14.3	
40 S	4 E	WM	22	SW SW	10.2	
40 S	4 E	WM	27	NW NW	23.3	
40 S	4 E	WM	27	SW NW	21.9	
40 S	4 E	WM	27	NW SW	27.6	
40 S	4 E	WM	27	SW SW	7.8	
40 S	4 E	WM	28	NE SE	3.4	
40 S	4 E	WM	28	SE SE	13.4	
40 S	4 E	WM	21	SE SE	1.1	POD 2
40 S	4 E	WM	22	NW NW	4.1	
40 S	4 E	WM	22	NW SW	6.8	
40 S	4 E	WM	22	SW NW	17.7	
40 S	4 E	WM	22	SW SW	16.0	
40 S	4 E	WM	27	NW NW	12.7	
40 S	4 E	WM	27	SW NW	10.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication