

**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	)	CORRECTED PARTIAL ORDER OF
THE KLAMATH TRIBES AND THE	)	DETERMINATION
UNITED STATES DEPARTMENT OF	)	
INTERIOR, BUREAU OF INDIAN	)	
AFFAIRS AS TRUSTEE ON BEHALF OF	)	
THE KLAMATH TRIBES	)	
	)	Water Right Claim 619

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 April 30, 1997, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted a Statement and Proof of Claim (Claim 619) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
2. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, 621, 729¹, and 730².

¹ On October 10, 2003, Claim 83 was bifurcated, and Claim 729 was assigned to the portion of Claim 83 appurtenant to lands acquired by the Klamath Tribes on September 5, 1995. *See* STIPULATION TO BIFURCATE CLAIM 83, ASSIGN CLAIM 729 TO ONE PORTION OF BIFURCATED CLAIM 83 (Oct. 10, 2003). On October 16, 2003, Claim 729 was consolidated into Case 283 into which Claims 613, 617 – 621 of the Klamath Tribes and the BIA had already been consolidated. *See* ORDER ON MOTION TO CONSOLIDATE (Oct. 16, 2003).

² On February 24, 2005, the portion of Claim 83 remaining after the first bifurcation on October 10, 2003, was again bifurcated, and Claim 730 was assigned to appurtenant to lands acquired by the Klamath Tribes on September 8, 2004. Claim 730 was consolidated into Case 283 into which Claims 613, 617 – 621 of the Klamath Tribes and the

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 619 was denied.
5. On May 8, 2000, the Klamath Tribes timely filed Contest 4009 to the Claim and/or Preliminary Evaluation of Claim 619.
6. On May 8, 2000, the BIA timely filed Contest 3880 to the Claim and/or Preliminary Evaluation of Claim 619.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3321 to the Claim and/or Preliminary Evaluation of Claim 619: Roger Nicholson; Roger Nicholson Cattle Co.³; Lloyd Nicholson Trust⁴; Dorothy Nicholson Trust⁵; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches⁶; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company⁷; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood⁸; Kenneth Zamzow⁹; Anita Nicholson¹⁰; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood¹¹; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane¹²; Walter Seput¹³; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill¹⁴; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise;

BIA had already been consolidated. *See* STIPULATION TO BIFURCATE CLAIM 83, AND ASSIGN CLAIM 730 TO A PORTION OF BIFURCATED CLAIM 83, AND TO CONSOLIDATE CLAIM NO. 730 INTO CASE 283. (Feb. 24, 2005).

³ Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

⁴ Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

⁵ Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

⁶ Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Jim McAuliffe and McAuliffe Ranches

⁷ Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Joe McAuliffe Company

⁸ On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3321. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

⁹ On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

¹⁰ Nicholson Investments, LLC, successor in interest to Anita Nicholson

¹¹ On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

¹² Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

¹³ James G. Wayne, Jr., successor in interest to Walter Seput.

¹⁴ Lillian Hill, successor in interest to William V. Hill

William C. Knudtsen¹⁵; Wayne Jacobs; Margaret Jacobs; Robert Bartell¹⁶; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust¹⁷; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District¹⁸; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm Bryant¹⁹; Peggy Marengo; Kenneth J. Hufford and Leslie Hufford²⁰; and Hart Estate Investment Company²¹.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3651 to the Claim and/or Preliminary Evaluation of Claim 619: 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.²², 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, Modoc Lumber Co., Bradley S. Luscombe, Berlva Pritchard²³, Don Vincent²⁴, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters and other like claims of the Klamath Tribes and the BIA as Case 283.
10. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3651. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002)
11. On November 29, 2006, the BIA timely submitted an amendment to Claim 619 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Nov. 29, 2006).

¹⁵ On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

¹⁶ Michael LaGrande, successor in interest to Robert Bartell

¹⁷ Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

¹⁸ On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

¹⁹ On October 31, 2003, William Bryant voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

²⁰ Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

²¹ Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

²² Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3651 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

²³ Berlva Pritchard voluntarily withdrew from Contest 3651 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

²⁴ Don Vincent voluntarily withdrew from Contest 3651 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

12. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contest 3321, 3880, and 4009).
13. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.
14. OWRD finds that the place of use listed in the Settlement Agreement, being LOT 3 AND 6 (NE¼ NW¼), SECTION 32, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M. is incorrect. The correct place of use is LOT 3 AND 6 (NE¼ NW¼), SECTION 32, TOWNSHIP 35 SOUTH, RANGE 12 EAST, W.M.
15. No contests or claims of injury were filed to the Claimant's November 29, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. a scrivener's error as described in Finding 14, above; the township for the place of use is corrected to TOWNSHIP 35 SOUTH, and
 - b. the provision in Paragraph 1 of the Settlement Agreement that provides the Point of Diversion for Claim 619; the Point(s) of Diversion for Claim 619 is as set forth in Paragraphs 2 through 6 of this Determination, and in the Water Right Claim Description, below.
2. The Claimants' timely amendment made on November 29, 2006, pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimants' claim.
3. The relocated point of diversion within LOT 10, NENE, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21 is approved.
4. The diversion of water from the original point of diversion, located within the SESE, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 125 FEET EAST FROM NW CORNER, SESE, SECTION 3, is no longer authorized; removal of the Chiloquin Dam was completed on August 21, 2008.
5. The quantity of water diverted at the relocated point of diversion on the Williamson River must not exceed the quantity of water lawfully available at the original point of diversion on the Sprague River.

6. Because there is no evidence on the record to the contrary, 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.
7. Based on the file and record herein, IT IS ORDERED that Claim 619 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 619
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 619, MYLAR MAP FILED NOVEMBER 29, 2006

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

PARCEL: HILL CEMETERY

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:
IRRIGATION OF 7.5 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE.

RATE OF USE:
0.19 CUBIC FOOT PER SECOND (CFS) TO BE MEASURED AT THE POINT OF DIVERSION, IF AVAILABLE AT THE ORIGINAL 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:
2.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
35 S	7 E	WM	32	NE NW	3	250 FEET SOUTH AND 250 FEET WEST FROM NE CORNER, NENW, SECTION 32

THE PLACE OF USE IS LOCATED AS FOLLOWS:

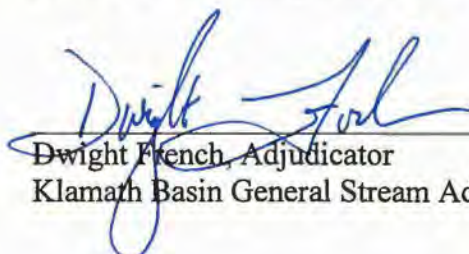
Practically Irrigable Acreage						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	12 E	WM	32	NE NW	3 and 6	7.50

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION ON THE SPRAGUE RIVER.

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication