

**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
NORA L. FLYNN; CECIL R. AND)	DETERMINATION
MILDRED K. SOMMERS;)	
LAVINA ARLENE ANDERSON; AND)	
ROBERT U. BURCH)	
_____)	Water Right Claim 676

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

A. FINDINGS OF FACT

1. Claim 676 (Claimants: NORA L. FLYNN; CECIL R. AND MILDRED K. SOMMERS; LAVINA ARLENE ANDERSON – 1408 MARTIN ST, KLAMATH FALLS, OR 97601; AND ROBERT U. BURCH – PO BOX 53, BEATTY, OR 97621) and its associated contests (1756 and 3563) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 83.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 676 on April 2, 2002. No exceptions were filed to the Proposed Order within the exceptions filing deadline.
3. On July 21, 2011, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify the season of use and rate, and to recognize a right for 5 acres of irrigation by the method of natural overflow. The Amended Proposed Order replaces the 2002 Proposed Order in its entirety.
4. No exceptions were filed to Amended Proposed Order.
5. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a Walton claim are established for the acres described in the Water Right Claim Description, below. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Beneficial use of water by the method of natural overflow is shown to be established for a portion of this claim.
4. Based on the file and record herein, IT IS ORDERED that Claim 676 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 676
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 676, PAGE 9

CLAIMANTS:

NORA FLYNN
421 SOUTH G STREET
LAKEVIEW, OR 97630

CECIL SOMMERS
MILDRED SOMMERS
PO BOX 99
BEATTY, OR 97621

PARCEL: FLYNN

SOURCE OF WATER: BROWN CREEK/DITCH, tributary to the SPRAGUE RIVER

PURPOSE or USE:

IRRIGATION OF 60.0 ACRES FROM BROWN CREEK/DITCH (POD 1)

RATE OF USE:

1.5 CUBIC FEET PER SECOND (CFS) FOR IRRIGATION, MEASURED AT THE 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:

3.1 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: MARCH 1 – OCTOBER 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	36 S	12 E	WM	15	SE NE	9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM POD 1						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	12 E	WM	15	SW NW	12, 13	17.4 ^a
36 S	12 E	WM	15	SE NW	11, 14	23.6 ^a
36 S	12 E	WM	15	SW NE	10, 15	9.7 ^a
36 S	12 E	WM	15	SE NE	9, 16	9.3 ^a

^aThe approved lands are restricted to the area between the railroad tracks and Browns Creek/Ditch

PARCEL: SOMMERS

SOURCES OF WATER:

BROWN CREEK/DITCH, tributary to the SPRAGUE RIVER, and
UNNAMED SPRINGS, tributary to BROWN CREEK/DITCH

PURPOSE or USE:

IRRIGATION OF 11.0 ACRES FROM BROWN CREEK/DITCH (POD 2), AND IRRIGATION OF 5.0 ACRES FROM UNNAMED SPRINGS BY THE METHOD OF NATURAL OVERFLOW

RATE OF USE OF WATER APPLIED FROM POD 2

0.28 CFS FROM POD 2 FOR IRRIGATION, MEASURED AT THE 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 OF WATER APPLIED FROM POD 2

4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE OF WATER APPLIED FROM POD 2: MARCH 1 – OCTOBER 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 2	Brown Creek/Ditch	36 S	12 E	WM	14	NE SW	22
	Unnamed Springs	No Specific Point of Diversion – Natural Overflow					

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM POD 2						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	12 E	WM	14	NW SW	20, 21	5.3
36 S	12 E	WM	14	NE SW	22	4.3
36 S	12 E	WM	14	SE SW	27	1.4

IRRIGATION BY METHOD OF NATURAL OVERFLOW FROM UNNAMED SPRINGS						
Twp	Rng	Mer	Sec	Q-Q	Acres	
36 S	12 E	WM	14	NW SW	5.0	


FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 3.1 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. 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.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication