

**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
STEPHEN AND MELISSA HESS	)	DETERMINATION
	)	
	)	
_____		Water Right Claim 685

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 31, 1991, STEPHEN AND MELISSA HESS (Claimants) timely submitted a Statement and Proof of Claim (Claim 685) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 685 was submitted for a total of 2,845.9 acre-feet of water from unnamed springs, Whiskey Creek, and the Sprague River, tributaries of the Williamson River, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 2,383.1 acre-feet for irrigation of 554.2 acres, 455.9 acre-feet for irrigation of 147.1 practicably irrigable acres, and 5.4 acre-feet for current livestock watering of 400 head. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 685 attesting that the information contained in the claim is true.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim for livestock watering and irrigation was approved, but for a smaller quantity of water, fewer acres, and with a longer irrigation season than claimed. The inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.



5. On May 3, 2000, the Claimants timely filed Contest 1758 to the Preliminary Evaluation of Claim 685.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3568: 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.<sup>1</sup>, 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 Pritchard<sup>2</sup>, Don Vincent<sup>3</sup>, 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 87.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3568. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3568 (Apr. 7, 2005).
9. On August 1, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1758 (Settlement Agreement) thereby resolving the remaining contest to Claim 685.
10. On August 4, 2005, the Adjudicator withdrew Case 87 from the Office of Administrative Hearings.
11. The Settlement Agreement stipulates to both vested livestock watering and inchoate livestock watering. However, the Claimants' "stockwater claim is based upon current use by cattle on the property," *See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 1, 1999 (Claim # 685, Pages 71-83). Therefore, OWRD finds that the inchoate livestock watering as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim. In the Settlement Agreement, the place of use listed for vested livestock watering is identical to the place of use listed for inchoate livestock watering with the exception of the following two quarter quarters: the NESE of Section 7, Township 36 South, Range 12 East, W.M. and the SENE of Section 18, Township 36 South, Range 12 East, W.M. OWRD finds that inchoate livestock watering incidental to irrigation of the practically irrigable acreage is permissible within these two quarter quarters.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3568 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3568 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3568 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.



## B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein, with the exception of inchoate livestock watering which was an enlargement of the original claim by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 11, above; inchoate livestock watering incidental to irrigation of the practically irrigable acreage is approved within the NESE of Section 7, Township 36 South, Range 12 East, W.M. and within the SENE of Section 18, Township 36 South, Range 12 East, W.M.
2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. 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.
5. 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 685 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

### **CLAIM NO. 685**

FOR A VESTED AND INCHOATE WATER RIGHT

### **CLAIM MAP REFERENCE:**

CLAIM # 685, PAGES 76-77; OWRD INVESTIGATION MAPS – T 36 S, R 11 E and T 36 S, R 12 E

### **CLAIMANT: STEPHEN AND MELISSA HESS**

PO BOX 111  
BEATTY, OR 97621

**VESTED (DEVELOPED) PORTION**

**SOURCE OF WATER:**

An UNNAMED SPRING and WHISKEY CREEK, tributary to the SPRAGUE RIVER, and The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

**PURPOSE OR USE:**

DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED) FROM AN UNNAMED SPRING;

IRRIGATION OF 553.7 ACRES, BEING 202.7 ACRES FROM POD 1, AND 351.0 ACRES FROM POD 2; AND

LIVESTOCK WATERING OF 400 HEAD.

**RATE OF USE:**

6.7074 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FROM AN UNNAMED SPRING FOR DOMESTIC EXPANDED, MEASURED AT THE POINT OF DIVERSION;

6.69 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, BEING 2.44 CFS FROM POD 1 AND 4.25 CFS FROM POD 2; AND

0.0074 CFS FROM POD 1 AND POD 2 FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 4800 GALLONS PER DAY FROM ALL SOURCES.

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:**

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

**PERIOD OF ALLOWED USE:**

Use	Period
Domestic Expanded	January 1 - December 31
Irrigation	March 1 - October 16
Livestock Watering	January 1 - December 31

**DATE OF PRIORITY:** OCTOBER 14, 1864



**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	Whiskey Creek	36 S	11 E	WM	13	SW NE	10	180 FEET WEST AND 1790 FEET SOUTH FROM NW CORNER, NENE SECTION 13
POD 2	Sprague River	36 S	12 E	WM	7	SE SE	4	NONE GIVEN
Unnamed Spring	Unnamed Spring	36 S	12 E	WM	18	NW NE	7	NONE GIVEN

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

DOMESTIC EXPANDED FROM UNNAMED SPRING					
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	12 E	WM	18	NW NE	7

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	11 E	WM	12	NE SE	17	19.2	POD 1
36 S	11 E	WM	12	NE SE	24	20.2	
36 S	11 E	WM	12	NW SE	18	6.5	
36 S	11 E	WM	12	NW SE	23	13.6	
36 S	11 E	WM	12	SW SE	26	19.9	
36 S	11 E	WM	12	SW SE	31	19.9	
36 S	11 E	WM	12	SE SE	25	20.2	
36 S	11 E	WM	12	SE SE	32	20.2	
36 S	11 E	WM	13	NE NE	8	20.2	
36 S	11 E	WM	13	NE NE	1	20.2	
36 S	11 E	WM	13	SE NE	9	11.8	
36 S	12 E	WM	18	SW NW	12	4.5	
36 S	12 E	WM	18	SW NW	13	6.3	
36 S	12 E	WM	7	NE SW		35.2	
36 S	12 E	WM	7	NW SW	3	16.8	
36 S	12 E	WM	7	SW SW	4	40.7	
36 S	12 E	WM	7	SE SW		40.0	
36 S	12 E	WM	7	NW SE		5.8	
36 S	12 E	WM	7	SW SE		30.2	
36 S	12 E	WM	7	SE SE		1.2	
36 S	12 E	WM	18	NE NE	1	6.3	
36 S	12 E	WM	18	NE NE	8	8.7	
36 S	12 E	WM	18	NW NE	2	17.6	
36 S	12 E	WM	18	NW NE	7	11.6	
36 S	12 E	WM	18	SW NE	10	1.5	
36 S	12 E	WM	18	NE NW	3	20.0	
36 S	12 E	WM	18	NE NW	6	18.2	
36 S	12 E	WM	18	NW NW	4	21.2	
36 S	12 E	WM	18	NW NW	5	21.2	
36 S	12 E	WM	18	SW NW	12	13.2	
36 S	12 E	WM	18	SW NW	13	14.6	
36 S	12 E	WM	18	SE NW	11	15.7	
36 S	12 E	WM	18	SE NW	14	11.3	



**INCHOATE PORTION**

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

**PURPOSE or USE:**

IRRIGATION OF 136.0 PRACTICABLY IRRIGABLE ACRES, BEING 22.9 ACRES FROM POD A, 13.0 ACRES FROM POD B, 78.9 ACRES FROM POD C, 5.2 ACRES FROM POD D, 8.8 ACRES FROM POD E, AND 7.2 ACRES FROM POD F; AND

INCHOATE INCIDENTAL LIVESTOCK WATERING WITHIN THE NESE OF SECTION 7, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M., AND THE SENE OF SECTION 18, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M.

**RATE OF USE:**

2.44 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.41 FROM POD A, 0.23 FROM POD B, 1.42 FROM POD C, 0.09 FROM POD D, 0.16 FROM POD E, AND 0.13 FROM POD F.

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:**

Use	Period
Incidental Livestock Watering	March 1 - October 16
Practicably Irrigable Acreage	March 1 - October 16

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD A	36 S	12 E	WM	7	NE SW	3	264 FEET SOUTH AND 990 FEET WEST FROM C¼ CORNER, SECTION 7
POD B	36 S	12 E	WM	7	NW SE	3	1188 FEET SOUTH AND 792 FEET EAST FROM C¼ CORNER, SECTION 7
POD C	36 S	12 E	WM	7	NW SE	3	1175 FEET SOUTH AND 990 FEET EAST FROM C¼ CORNER, SECTION 7
POD D	36 S	12 E	WM	7	SE SE	4	726 FEET NORTH FROM SE CORNER, SECTION 7
POD E	36 S	12 E	WM	18	NE NE	1	105 FEET SOUTH AND 260 FEET WEST FROM NE CORNER, SECTION 18
POD F	36 S	12 E	WM	18	NE NE	8	660 FEET SOUTH AND 792 FEET WEST FROM NE CORNER, SECTION 18

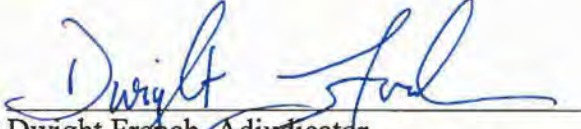
**THE PLACES OF USE ARE LOCATED AS FOLLOWS:**

PRACTICABLY IRRIGABLE ACREAGE WITH INCIDENTAL INCHOATE LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	7	NE SE		38.0	POD C
36 S	12 E	WM	18	SE NE	9	1.0	POD F

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	7	NE SW		0.9	POD A
36 S	12 E	WM	7	NW SW	3	22.0	
36 S	12 E	WM	7	NW SE		8.0	POD B
36 S	12 E	WM	7	SW SE		5.0	
36 S	12 E	WM	7	NW SE		16.7	POD C
36 S	12 E	WM	7	SW SE		2.0	
36 S	12 E	WM	7	SE SE		22.2	
36 S	12 E	WM	7	SE SE		5.2	POD D
36 S	12 E	WM	7	SE SE		3.2	POD E
36 S	12 E	WM	18	NE NE	1	5.6	
36 S	12 E	WM	18	NE NE	8	5.5	POD F
36 S	12 E	WM	18	NW NE	7	0.7	

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication