

**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
EMMETT HICKS, REPRESENTATIVE OF)	DETERMINATION
HARRY CLARKSON ESTATE)	
)	
_____)	Water Right Claim 688

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, LEROY HICKS¹, REPRESENTATIVE OF HARRY CLARKSON ESTATE (Claimant) timely submitted a Statement and Proof of Claim (Claim 688) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee 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 688 was submitted for a total of 123.6 acre-feet of water from the Sprague River via Modoc Point Irrigation District canal system, a tributary of the Williamson River, being 49.0 acre-feet for irrigation of 11.4 acres, 74.5 acre-feet for irrigation of 24.0 practicably irrigable acres, and 0.1 acre-feet for livestock watering of 6 head. The claimed period of use is year-round for livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 688 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 with a shorter period of use for livestock watering and longer irrigation season than

¹ The current representative of the Harry Clarkson Estate is Emmett Hicks.

claimed; and 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 Claimant timely filed Contest 1759 to the Preliminary Evaluation of Claim 688.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3569: 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.², 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 Pritchard³, Don Vincent⁴, 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. The Office of Administrative Hearings designated these matters as Case 88, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003).
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3569. *See* NOTICE OF WITHDRAWAL OF CONTEST NOS. 3532, 3547, 3550, AND 3569 (Apr. 7, 2005).
9. On December 1, 2006, the Claimant timely submitted an amendment to Claim 688 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).
10. No contests or claims of injury were filed to the Claimant's December 1, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.
11. On November 9, 2007, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1759 (Settlement Agreement) thereby resolving the remaining contest to Claim 688.
12. On November 14, 2007, the Adjudicator withdrew Case 88 from the Office of Administrative Hearings.

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3569 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

³ Berlva Pritchard voluntarily withdrew from Contest 3569 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3569 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. OWRD finds that the place of use described in Claim 688 was successfully withdrawn from Modoc Point Irrigation District's Claim 84. The settlement condition precedent was met on November 9, 2007 with a settlement agreement between the Claimant of Claim 688, OWRD and the Klamath Project Water Users. *See* STIPULATION TO RESOLVE CONTEST 1759 (Nov. 9, 2007). *See also* STIPULATION TO RESOLVE CONTESTS [Claim 84] (Nov. 21, 2007).

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein.
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 Claimant's timely amendment, made on December 1, 2006, pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimant's claim.
4. The relocated point of diversion on the Williamson River, 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.
5. The diversion of water from the original point of diversion at the Chiloquin Dam on the Sprague River, 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.
6. 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 at the Chiloquin Dam on the Sprague River.
7. 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.
8. 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.
9. Based on the file and record herein, IT IS ORDERED that Claim 688 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 688
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 688, PAGE 64; and CLAIM # 688, MYLAR MAP filed Dec. 1, 2006

CLAIMANT: EMMETT HICKS, REPRESENTATIVE OF HARRY CLARKSON ESTATE
1836 WIARD STREET
KLAMATH FALLS, OR 97603

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:
IRRIGATION OF 11.4 ACRES; AND
LIVESTOCK WATERING OF 6 HEAD.

RATE OF USE:
0.2801 CUBIC FOOT PER SECOND (CFS), IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, AS FOLLOWS:

0.28 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION; AND

0.0001 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 72 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:
4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 16
Livestock Watering	March 1 - October 16

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 AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER (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	33	SE SE		MODOC POINT IRRIGATION DISTRICT CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	33	SE SE	25	5.2
35 S	7 E	WM	33	SE SE	32	6.2

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 AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 24.0 PRACTICABLY IRRIGABLE ACRES.

RATE OF USE:

0.43 CUBIC FOOT PER SECOND (CFS), IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION; TO BE 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:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

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 AT THE CHILOQUIN DAM						
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	33	SE SE		NONE GIVEN

THE PLACE OF USE IS LOCATED AS FOLLOWS:


PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	33	SE SE	25	24.0
35 S	7 E	WM	33	SE SE	32	

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 AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication