

**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
ERNESTINE S. KIRK, AND)	DETERMINATION
JERRY ALLEN PARRISH)	
_____)	
)	Water Right Claim 691

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, ERNESTINE S. KIRK AND JERRY ALLEN PARRISH (Claimants) timely submitted a Statement and Proof of Claim (Claim 691) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as 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 691 was submitted for a total of 607.1 acre-feet of water from the Sprague River, a tributary of the Williamson River, being 464.4 acre-feet for irrigation of 108.0 acres, 142.5 acre-feet for irrigation of 46.0 practicably irrigable acres, and 0.2 acre-feet for livestock watering of 12 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 691 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 longer irrigation season than 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 1762 to the Preliminary Evaluation of Claim 691.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3572: 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 91.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3572. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3572 (Apr. 7, 2005).
9. On June 15, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1762 (Settlement Agreement) thereby resolving the remaining contest to Claim 691.
10. On June 20, 2005, the Adjudicator withdrew Case 91 from the Office of Administrative Hearings.
11. Based on the Claimants map (*See* Claim # 691, Page 66) , and OWRD’S Investigation Map (T 36 S, R 12 E, W.M.), OWRD finds the 7.5 practically irrigable acres listed in the Settlement Agreement as being within Government Lot 24 are also located in Government Lot 17.
12. Based on the Claimants map (*See* Claim # 691, Page 66), OWRD finds the point of diversion for the inchoate portion is located in the SWSE, LOT 26, SECTION 8, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M., and not in the SESW as listed in the Settlement Agreement.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3572 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3572 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3572 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 two exceptions:
 - a. the 7.5 practically irrigable acres are located within both Government Lots 17 and 24 as described in Finding 11, above, and
 - b. a scrivener's error in the location of the point of diversion for the inchoate portion as described in Finding 12, above; the point of diversion is corrected to the SWSE, LOT 26, SECTION 8, 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. Beneficial use of water by the method of natural overflow is established.
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 will apply to the irrigation from the points of diversion.
6. Based on the file and record herein, IT IS ORDERED that Claim 691 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 691
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 691, PAGE 66 and OWRD INVESTIGATION MAP – T 36 S, R 12 E

CLAIMANT: ERNESTINE S. KIRK, AND
JERRY ALLEN PARRISH
PO BOX 181
BEATTY OR 97621

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:
IRRIGATION OF 51.6 ACRES FROM POD 1;

IRRIGATION OF 56.4 ACRES BY NATURAL OVERFLOW; AND

LIVESTOCK WATERING UP TO 12 HEAD FROM POD 1 AND/OR BY NATURAL OVERFLOW.

RATE OF USE FOR USE OF WATER APPLIED FROM POD 1:
0.9002 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.9 CFS FROM POD 1 FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION;

0.0002 CFS FOR LIVESTOCK WATERING FROM POD 1 MEASURED AT THE PLACE OF USE, NOT TO EXCEED 144 GALLONS PER DAY FOR ENTIRE CLAIM.

DIVERSION OF STOCK WATER FROM POD 1 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 FOR USE OF WATER APPLIED FROM POD 1:
4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE FOR USE OF WATER APPLIED FROM POD 1:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	12 E	WM	8	SE SW	30	451 FEET NORTH AND 50 FEET WEST FROM S¼ CORNER, SECTION 8
Natural Overflow	36 S	12 E	WM	8	SE¼		No specific point of diversion; Natural Overflow

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	8	NE SE	17	16.0	POD 1
36 S	12 E	WM	8	NE SE	24	16.1	
36 S	12 E	WM	8	NW SE	18	16.4	
36 S	12 E	WM	8	NW SE	23	3.1	
36 S	12 E	WM	8	SW SE	26	11.3	Natural Overflow
36 S	12 E	WM	8	SW SE	31	14.2	
36 S	12 E	WM	8	SE SE	25	13.1	
36 S	12 E	WM	8	SE SE	32	17.8	

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 4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. RATE FOR IRRIGATION MAY NOT EXCEED 1.41 CFS. THE SEASON OF USE FOR IRRIGATION MAY NOT EXCEED MARCH 1 TO OCTOBER 16. RATE FOR LIVESTOCK WATERING MAY NOT EXCEED 144 GALLONS PER DAY FOR THE ENTIRE CLAIM.

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 46.0 PRACTICABLY IRRIGABLE ACRES FROM POD A

RATE OF USE:

0.83 CUBIC FOOT PER SECOND FROM POD A, 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 POINT OF DIVERSION IS LOCATED AS FOLLOWS:


POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD A	36 S	12 E	WM	8	SW SE	26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	8	NE SE	17	7.5	POD A
36 S	12 E	WM	8	NE SE	24		
36 S	12 E	WM	8	SW SE	26	12.1	
36 S	12 E	WM	8	SE SE	25	6.9	
36 S	12 E	WM	8	NW SE	18	19.5	
36 S	12 E	WM	8	NW SE	23		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication