

**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
RICHARD W. GRAHAM, AND)	DETERMINATION
ALLAN AND IRENE KLUS)	
)	
)	Water Right Claim 697

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, VINA KIRK AND ORIN KIRK timely submitted a Statement and Proof of Claim (Claim 697) 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 an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 697 was submitted for a total of 164.0 acre-feet of water from Fort Creek via the Fort Creek Canal, a tributary of the Wood River, for irrigation of 52.9 practicably irrigable acres. The claimed period of use is March 1 through October 16. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 697 attesting that the information contained in the claim is true.
4. OWRD determined that the property appurtenant to Claim 697 was ultimately transferred to non-Indian successors, being RICHARD W. GRAHAM (475 KAER AVE, RED BLUFF, CA 96080), all that portion of the SW¹/₄ SW¹/₄ of Section 1 lying west of Crater Lake Highway 62, Township 34 South, Range 7.5 East, W.M. ("Graham Lands"), and ALLAN AND IRENE KLUS, all that portion of the SW¹/₄ SW¹/₄ and the W¹/₂ SE¹/₄ SW¹/₄ of Section 1 lying east of Crater Lake Highway 62, Township 34 South, Range 7.5 East, W.M. ("Klus Lands"). See (1) LETTER (July 24, 1995), (Claim # 697, Page 031), (2) WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M95, PAGE 17183 (June 30, 1995) (Claim # 697, Page 037), and (3) INTEROFFICE MEMORANDUM (Feb. 4, 1999) (Claim # 697, Page 047). ALLAN AND IRENE KLUS and RICHARD W. GRAHAM are Co-Claimants in Claim 697. Non-Indian successors to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because “the claim is for a source which has been previously adjudicated.”
6. On May 8, 2000, ALLAN AND IRENE KLUS (Claimants), timely filed Contest 3118 to the Preliminary Evaluation of Claim 697.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3510: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3816 to the Claim and Preliminary Evaluation of Claim 697.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4240 to the Claim and Preliminary Evaluation of Claim 697.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 251.
11. On May 6, 2003, Claim 697 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
12. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
13. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3510 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3510 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3510 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

RULING ON LEGAL ISSUES (referenced in Finding 12, above). See ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

14. On August 3, 2004, the Klamath Tribes withdrew Contest 4240. See KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Aug. 3, 2004).
15. The Office of Administrative Hearings conducted contested case proceedings on the "Graham Lands" and ultimately issued an ORDER GRANTING MOTION FOR RULING ON LEGAL ISSUES AGAINST CLAIMANT RICHARD W. GRAHAM; PROPOSED ORDER PARTIALLY DENYING CLAIM on June 9, 2005 (Proposed Order) denying the "Graham Lands" portion of Claim 697.
16. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
17. On August 26, 2005 the United States of America filed an amendment to Contest 3816. See AMENDMENT TO UNITED STATES' CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (Aug. 26, 2005).
18. On January 4, 2006, Allan and Irene Klus (Claimants), OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 697.
19. On January 6, 2006, the Adjudicator withdrew Case 251 from the Office of Administrative Hearings.
20. OWRD finds that the 16.5 acres within the SW¹/₄ SW¹/₄ as listed in Settlement Agreement in Paragraph B.1.h. is inconsistent with the corresponding map referenced as Exhibit A in the same paragraph, and is attached to the Settlement Agreement. The map shows 15.8 irrigated acres within the SW¹/₄ SW¹/₄. Thus, OWRD finds 15.8 irrigated acres within the SW¹/₄ SW¹/₄.

B. DETERMINATION

1. The Settlement Agreement executed between Allan and Irene Klus (Claimants), OWRD, the United States of America, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with the exception of a scrivener's error in the total number of irrigated acres within the SW¹/₄ SW¹/₄ as described in Finding 20, above; the total acres within the SW¹/₄ SW¹/₄ is corrected to 15.8 acres.
2. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
3. The elements of a Walton claim are established for the "Klus Lands." The elements of a Walton claim are not established for the "Graham Lands." The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

4. 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.
5. Based on the file and record herein, IT IS ORDERED that the portion of Claim 697 designated at the "Graham Lands" is denied and is of no force or effect.
6. Based on the file and record herein, IT IS ORDERED that the portion of Claim 697 designated as the "Klus Lands" is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 697
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 697, PAGE 67

CLAIMANT: ALLAN AND IRENE KLUS
4785 ONYX DR.
KLAMATH FALLS, OR 97603

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 28.3 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 60 HEAD

RATE OF USE:
0.58 CUBIC FEET PER SECOND (CFS) 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:


Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Fort Creek via Fort Creek Canal	33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH & 960 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	1	SW SW	15.8
34 S	7.5 E	WM	1	SE SW	12.5

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication