

**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
MELINDA CAUVIN, AND	)	DETERMINATION
LOREN WALCH	)	
_____	)	Water Right Claim 700

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, KAREN AND WILLIAM RAY timely submitted a Statement and Proof of Claim (Claim 700) 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 Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 700 was submitted for a total of 346.2 acre-feet of water from the Sprague River via Modoc Point Irrigation District canal system, a tributary of the Williamson River, being 344 acre-feet for irrigation of 80.0 acres, and 2.2 acre-feet for livestock watering of 160 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 700 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 claim for livestock watering and irrigation was approved, but with a shorter period of use for livestock watering and longer irrigation season than claimed.
5. On May 8, 2000, the Karen and William Ray timely filed Contest 3578 to the Preliminary Evaluation of Claim 700.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3578: 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. On May 8, 2000, the United States of America timely filed Contest 3778 to the Claim and/or Preliminary Evaluation of Claim 250.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4241 to the Claim and/or Preliminary Evaluation of Claim 250.
9. 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 98, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003). Claim 700 was consolidated into Case 209 because lands appurtenant to this claim are partially or fully coextensive with the Modoc Point Irrigation District's claimed place of use in Claim 84, or may involve the delivery of water through District facilities serving lands appurtenant to the claims.
10. The property appurtenant to Claim 700 was ultimately transferred to non-Indian successors, MELINDA CAUVIN AND LOREN WALCH (Claimants). *See* QUITCLAIM DEED, COUNTY OF KLAMATH, VOL. M04, PAGE 26517 (April. 30, 2004), and CHANGE OF OWNERSHIP FORM (Oct. 6, 2004). A non-Indian successor to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
11. On May 31, 2007, the Klamath Tribes withdrew Contest 4241. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST; CONSOLIDATED CASE: 209 (PERTAINING TO CONSOLIDATED CLAIM 700) (May 31, 2007).
12. On June 4, 2007, the United States of America withdrew Contest 3778. *See* UNITED STATES' VOLUNTARY WITHDRAWAL OF CONTEST; CONSOLIDATED CASE: 209 (PERTAINING TO CONSOLIDATED CLAIM 700) (June 4, 2007).
13. On November 9, 2007, the Claimants, OWRD and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST 3578 (Settlement Agreement) thereby resolving the remaining contest to Claim 700.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3578 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3578 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3578 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

14. On November 14, 2007, the Adjudicator withdrew Case 252 from the Office of Administrative Hearings.
15. OWRD finds that the place of use described in Claim 700 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 Claimants of Claim 700, OWRD and the Klamath Project Water Users. *See* STIPULATION TO RESOLVE CONTEST 3578 (Nov. 9, 2007). *See also* STIPULATION TO RESOLVE CONTESTS [Claim 84] (Nov. 21, 2007).

## **B. DETERMINATION**

1. The Settlement Agreement executed between the Claimants, OWRD and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. 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.
3. 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 700 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 700**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**  
CLAIM # 700, PAGE 44

**CLAIMANTS:** MELINDA CAUVIN  
LOREN WALCH  
PO BOX 519  
CHILOQUIN, OR 97624

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

**PURPOSE OR USE:**  
IRRIGATION OF 80.0 ACRES; AND  
  
LIVESTOCK WATERING OF 160 HEAD

**RATE OF USE:**

2.003 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.003 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1920 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:**

3.5 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 POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

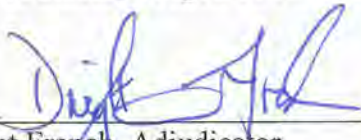
DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER via Modoc Irrigation District Canal					
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	7 E	WM	3	SE SE	125 FEET EAST FROM NW CORNER, SESE, SECTION 3

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

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	7 E	WM	5	NE SE	17	20.0
36 S	7 E	WM	5	NE SE	24	20.0
36 S	7 E	WM	5	NW SE	18	20.0
36 S	7 E	WM	5	NW SE	23	20.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication