

**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
BONANZA CONSERVATION, LLC	)	DETERMINATION
	)	
_____	)	Water Right Claim 704

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS  
TO THE PROPOSED ORDER**

1. Claim 704 (Submitted by THE NATURE CONSERVATION TRUST) and its associated contests (1692, 3074, 3512, 3818, and 4243) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 253.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 703 and 704 on March 28, 2007.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) The Nature Conservation Trust and (2) the United States of America.
4. The exceptions filed to the Proposed Order along with opposition and responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 704.
5. On January 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify original Proposed Order to (1) correct and clarify the amounts of acreage irrigated by various sources of water and diversion points, (2) recognize beneficial use of water prior to transfer from Indian ownership, and to (3) correct the season of use approved for irrigation. With respect to the portions of the 2007 Proposed Order that pertained to Claim 704, and except as modified, the Amended Proposed Order fully incorporated the 2007 Proposed Order.

6. On March 15, 2012, the claim was transferred to the BONANZA CONSERVATION, LLC (Claimant). *See* STATUTORY WARRANTY DEED (September 27, 2011), and CHANGE OF OWNERSHIP FORM (March 15, 2012).
7. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimant Bonanza Conservation, LLC, the United States of America and the Klamath Project Water Users (KPWU).
8. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 704. The exceptions are found to be persuasive, in part, and therefore, modifications are made to the Amended Proposed Order as described in Sections A.10, and A.11, below.
9. The 2012 Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “B. Modifications to the ‘Findings of Fact’” is adopted with modifications, as set forth in Section A.10, below, and (2) the section titled “D. Modifications to the ‘Opinion’” is adopted with modifications, as set forth in Section A.11, below. The outcome of the Amended Proposed Order is without modification.
10. **“B. Modifications to the ‘Findings of Fact.’”** Within the Amended Proposed Order’s section titled “B. Modifications to the ‘Findings of Fact,’” subsection “e.,” the first paragraph of Finding of Fact #14 pertaining to Allotment 795 (Amended Proposed Order at 5) is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

This allotment, located in SE¼ SW¼, SW¼ SE¼ of Section 16 (Allotment 795-North) (Claim 703), and E½ E½ NE¼ of Section 28, T36S R10E, W.M. (Allotment 795-South) (Claim 704), was allotted to Birdie Jackson, a Klamath Indian, by instrument dated February 11, 1921. (OWRD Ex. 1 at 78; OWRD Ex. 2 at 60.) The property appurtenant to Allotment 795 North (Claim 703) was conveyed to Klamath Indian Hiram Richard Robbins on February 27, 1940 (Ex. U6 at 14; U9 at 17). The property was transferred from Klamath Indians Rayson Colde Tupper, Clint Strom Tupper, Tana Lee Tupper Walker, Richard Keane Tupper, Rachael Robbins Tupper, and the Estate of Berva D. Tupper to Hi Robbins Corporation, an Oregon Corporation, in April 1978. (Ex. U8 at 5-13; U9.) ~~The property was apparently conveyed to Hiram Robbins, also a Klamath Indian, at some time before 1978, when it was conveyed by Robbins’ heirs to the Hi Robbins Corporation, an Oregon Corporation. (Ex. U8 at 5-13.)~~ The property

was subsequently conveyed to Alan B. Tyler, also a non-Indian, on September 16, 1991. (*Id.* at 14-15.)

**Reason for Modifications:** The 2012 Amended Proposed Order failed to fully set forth the evidence on the record with regards to modifications made to the ALJ's Proposed Order Findings of Fact 14.

11. **“D. Modifications to the ‘Opinion.’”** Within the Amended Proposed Order’s section titled “D. Modifications to the ‘Opinion,’” and within subsection “3. Application of *Walton* Elements to Each Allotment,” the section for “Allotment 795” (Amended Proposed Order at 12) is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

**Allotment 795:**

The first evidence of non-Indian ownership on Allotment 795 is when it passed from Indian ownership (~~Hiram Robbins~~) in 1978, to the Hi Robbins Corporation. It was divided between Claim 703 and 704. In their exceptions to the Amended Proposed Order, the United States pointed to a title schematic in the record (OWRD Ex. 1 at 23, bottom, right hand corner) to “reasonably infer that the first non-Indian owner of this allotment was Dan Wann in 1925.” (CONTESTANT UNITED STATES’ EXCEPTIONS TO THE AMENDED PROPOSED ORDER at 83.) OWRD gives little weight to this hand written schematic, especially since it does not agree with the title documents that are included in the record. The title schematic illustrates that a “Deed Non Compt Indian Lands” transferred lands in Section 16 to Nathaniel Jackson prior to its transfer to Hiram Robbins. The 1940 unrestricted deed (Ex. U6 at 14) shows the property transferred from the Klamath Agency directly to Hiram Robbins without an intermediary transfer to Nathaniel Jackson, raising doubt that the title schematic referred to by the United States pertains to Allotment 795. The United States is correct that there is a gap in the chain of title between the property’s initial allotment and its reversion back to the United States, which must have occurred at some time prior to 1940. However, the fact that the property did revert back to the United States means that it is more likely than not that the property did not pass out of Indian ownership prior to 1940. Allotment 795 then continued in Indian ownership (Hiram Robbins), and was ultimately conveyed by Indian owners to the Hi Robbins Corporation in 1978.

¶ The portion of Allotment 795 that is subject to Claim 703 was irrigated while still in Indian ownership beginning in the 1960s when Phil Tupper installed check dams to control water for irrigation. This portion of the claim, 22.8 acres, should be allowed.

The portion subject to claim 704 was irrigated by a diversion from a small spring at the head of Cherry Creek, prior to 1986, while held by the first non-Indian owner, Hi Robbins Corporation. Given its description as an “old ditch,” it is likely that this diversion was put in place some time before, either while the property was in Indian ownership or soon after it was transferred to the Corporation. Because a federal reserved water right claim is at issue, and not a state-issued water permit or certificate, the cancellation of Permit S-43051 for failure to return proof does not establish that none of the lands had been irrigated; to the contrary, a field inspection made by OWRD found that irrigation on the portion of the permitted lands appurtenant to Claim 704 (2.3 acres) was occurring by 1979. This provides evidence that irrigation was occurring within one year of transfer to non-Indian ownership, demonstrating that the water claimed for irrigation in this parcel was put to beneficial use with reasonable diligence. Thus, the portion of the property subject to Claim 704, 2.3 acres, should be allowed.

**Reason for Modifications:** The evidence supports ownership conveyed to Hi Robbins Corporation, not from Hiram Robbins in 1978, but from multiple Indians listed in Findings of Fact #14 as amended in this partial Order of Determination in Section A.10. above.

## B. DETERMINATION

1. The Proposed The 2012 Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “B. Modifications to the ‘Findings of Fact’” is adopted with modifications, as set forth in Section A.10, above, and (2) the section titled “D. Modifications to the ‘Opinion’” is adopted with modifications, as set forth in Section A.11, above. The outcome of the Amended Proposed Order is without modification.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 704 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 704**

**CLAIM MAP REFERENCE:**

CLAIM # 704, PAGE 7; OWRD INVESTIGATION MAP – T 36 S, R 10 E

**CLAIMANT: BONANZA CONSERVATION, LLC**

31895 VILLAGE CREST LANE  
WILSONVILLE, OR 97070

**SOURCES OF WATER:**

UNNAMED STREAM (“WEST FORK” CHERRY CREEK), tributary to CHERRY CREEK,

**PURPOSE OR USE:**

IRRIGATION OF 2.3 ACRES

**RATE OF USE:**

0.06 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:**

3.0 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:**


Pod Name	Twp	Rng	Mer	Sec	Q-Q
“West Fork” Cherry Creek”	36 S	10 E	WM	28	SE NE

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

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	10 E	WM	28	NE NE	1.2
36 S	10 E	WM	28	SE NE	1.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 \_\_\_\_\_  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication