

**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
PACHECO PASS PROPERTIES, LP)	DETERMINATION
)	
)	
_____		Water Right Claim 708

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 24, 1991, CHARLOTTE M. MATHIS, SURVIVING JOINT TRUSTEE, ON BEHALF OF MATHIS FAMILY TRUST UTA 8/11/87 timely submitted a Statement and Proof of Claim (Claim 5) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. In a August 26, 1998 letter, OWRD requested clarification of Claim 5, in part, as follows: "Because the law [OAR 690-028-0025(2)] requires that a separate claim must be filed for each non-contiguous property, this claim must be separated into two different claims--one for parcels 1 & 2 [Claim A], and another for parcels 3 through 6 [Claim B]."
3. On June 29, 1999, in response to OWRD's request, CHARLOTTE M. MATHIS, SURVIVING JOINT TRUSTEE, ON BEHALF OF MATHIS FAMILY TRUST UTA 8/11/87 divided Claim 5 by timely submitting additional Statements and Proof of Claim that separated Claim 5 into two parts, being "Claim A" and "Claim B". OWRD retained "Claim A" (Parcels 1 and 2) as Claim 5 and labeled "Claim B" (Parcels 3 - 6) as Claim 708.
4. Claim 708 was submitted for 7.004 cfs of water from Fort Creek and Crooked Creek, tributaries of the Wood River, being 6.834 cfs for irrigation of 411.9 acres, and 0.17 cfs for livestock watering. The duty and limit claimed are 5.0 acre-feet per acre per year and 1/50 cubic foot per second per acre, respectively. The claimed period of use is year-round for livestock watering, and April 1 through October 1 for irrigation. The claimed priority date is "1864."

5. J. ANTHONY GIACOMINI, an authorized agent of CHARLOTTE M. MATHIS, MATHIS FAMILY TRUST UTA 8/11/87, signed the original Claim 5 attesting that the information contained in the claim is true. CHARLOTTE M. MATHIS signed the amendments (Claim 5 and Claim 708) attesting that the information contained in the each claim is true.
6. 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.”
7. The property appurtenant to Claim 708 was transferred to LAPALOMA ENTERPRISES. *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M00, PAGE 4158 (Feb. 8, 2000) and CHANGE OF OWNERSHIP FORM (Feb. 9, 2000).
8. On May 8, 2000, the Mathis Family Trust timely filed Contests 2746 (Parcel 3), 2747 (Parcel 4), 2748 (Parcel 5), and 2749 (Parcel 6) to the Preliminary Evaluation of Claim 708.
9. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3513: 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., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
10. On May 8, 2000, the United States of America timely filed Contest 3819 to the Claim and Preliminary Evaluation of Claim 708.
11. On May 8, 2000, the Klamath Tribes timely filed Contest 4244 to the Claim and Preliminary Evaluation of Claim 708.
12. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 3075 to the Claim and/or Preliminary Evaluation of Claim 708.
13. On May 8, 2000, Ambrose W. McAuliffe, Dwight Mebane, Elmore Nicholson, Richard Nicholson, and William Nicholson timely filed Contest 2757 to the Claim and/or Preliminary Evaluation of Claim 708.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3513 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3513 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3513 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

14. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 254.
15. On March 11, 2002, Ambrose W. McAuliffe, Dwight Mebane, Elmore Nicholson, Richard Nicholson, and William Nicholson withdrew Contest 2757 by stipulation. *See CLAIM #708 STIPULATION* (Mar. 11, 2002).
16. On May 20, 2003, WaterWatch's Contest 3075 was dismissed. *See ORDER DISMISSING WATER WATCH OF OREGON INC.'S CONTESTS NOS. 2820, ET AL.* (May 20, 2003).
17. On May 6, 2003, Claim 708 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.
18. 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.
19. 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 RULING ON LEGAL ISSUES* (referenced in Finding 17, above). *See ORDER VACATING ORDER TO CONSOLIDATE* (May 27, 2004).
20. On February 8, 2005, the Klamath Tribes withdrew Contest 4244. *See KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST* (Feb. 8, 2005).
21. On June 17, 2005, an *ORDER ON MOTION FOR RULING ON LEGAL ISSUES* (Order) was issued resolving Contests 2746 and 2749 by denying the claim for Parcels 3 and 6.
22. On January 26, 2006, LaPaloma Enterprises, 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 708.
23. On January 30, 2006, the Adjudicator withdrew Case 254 from the Office of Administrative Hearings.
24. OWRD finds that livestock watering including that which is incidental to irrigation is limited to 1700 head as originally claimed.
25. The property appurtenant to Claim 708 was transferred to PACHECO PASS PROPERTIES, LP (Claimant). *See WARRANTY DEED* (April 18, 2007), and *CHANGE OF OWNERSHIP FORM* (May 18, 2007).

B. DETERMINATION

1. The Settlement Agreement executed between LaPaloma Enterprises, OWRD, the United States of America, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The Order issued by the Office of Administrative Hearing (June 17, 2005) is adopted and incorporated as if set forth fully herein.
3. The elements of a Walton claim are established for Parcels 4 and 5. 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. Livestock watering including that which is incidental to irrigation is limited to 1700 head as described in Finding 24, above. 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 and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
6. Based on the file and record herein, IT IS ORDERED that the portion of Claim 708 pertaining to Parcels 3 and 6 is denied and is of no force or effect.
7. Based on the file and record herein, IT IS ORDERED that the portion of Claim 708 pertaining to Parcels 4 and 5 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 708
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 708 SETTLEMENT MAP – PARCEL 4 (Jan. 13, 2006), and
CLAIM # 708 SETTLEMENT MAP – PARCEL 5 (Jan. 24, 2006)

CLAIMANT: PACHECO PASS PROPERTIES, LP
PO BOX 485
SNELLING, CA 95369

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

PURPOSE OR USE:

IRRIGATION OF 105.8 ACRES (PARCEL 4) WITH INCIDENTAL LIVESTOCK WATERING UP TO 1700 HEAD FROM FORT CREEK POD 1;

IRRIGATION OF 70.6 ACRES (PARCEL 5) FROM FORT CREEK POD 2;

IRRIGATION OF 29.0 ACRES (PARCEL 5) FROM CROOKED CREEK POD; AND LIVESTOCK WATERING UP TO 1700 HEAD FROM FORT CREEK POD 2 AND/OR CROOKED CREEK POD.

LIVESTOCK WATERING INCLUDING THAT WHICH IS INCIDENTAL TO IRRIGATION MUST NOT EXCEED 1700 HEAD.

RATE OF USE:

2.5115 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.48 CFS FROM FORT CREEK POD 1 FOR IRRIGATION OF PARCEL 4 WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION;

1.0 CFS, BEING 0.42 CFS FROM FORT CREEK POD 2 AND 0.58 CFS FROM CROOKED CREEK POD, FOR IRRIGATION OF PARCEL 5, MEASURED AT THE POINTS OF DIVERSION; AND

0.0315 CFS FOR LIVESTOCK WATERING FROM FORT CREEK POD 2 INCLUDING ITS DITCHES, AND/OR CROOKED CREEK INCLUDING ITS DITCHES MEASURED AT THE PLACE OF USE, NOT TO EXCEED 20,400 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE ON PARCEL 5 IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

4.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering on Parcel 4	April 1 - October 1
Irrigation on Parcel 5	April 1 - October 1
Livestock Watering on Parcel 5	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Fort Creek POD 1	Fort Creek	33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26
Fort Creek POD 2	Fort Creek	33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 990 FEET EAST FROM NW CORNER, SECTION 26
Crooked Creek POD	Crooked Creek	33 S	7.5 E	WM	26	NW NE	1200 FEET SOUTH & 2900 FEET EAST FROM NW CORNER, SECTION 26


THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING ON PARCEL 4							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7.5 E	WM	3	NE NE		6.5	Fort Creek POD 1
34 S	7.5 E	WM	3	NW NE		20.0	
34 S	7.5 E	WM	3	SW NE		40.0	
34 S	7.5 E	WM	3	SE NE		12.1	
34 S	7.5 E	WM	3	NE NW	9	6.6	
34 S	7.5 E	WM	3	SE NW	10	20.6	
34 S	7.5 E	WM	3	SE NW	10	20.6	

IRRIGATION and LIVESTOCK WATERING ON PARCEL 5						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
33 S	7.5 E	WM	35	NE SW	2.7	Fort Creek POD 2
33 S	7.5 E	WM	35	NW SW	21.1	
33 S	7.5 E	WM	35	SW SW	18.7	
33 S	7.5 E	WM	35	SE SW	28.1	
33 S	7.5 E	WM	35	NE SW	20.3	
33 S	7.5 E	WM	35	SE SW	8.7	Crooked Creek POD

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication