

**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
TULE SMOKE, INC.)	DETERMINATION
)	
_____)	Water Right Claim 210

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 210 (Claimant: TULE SMOKE, INC.) and its associated contests (41, 3196, 3416, 3850, and 4192) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 141.
2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER for Claim 210 on December 31, 2002. OWRD re-referred the case to the OAH on February 9, 2006. After further hearing, the Administrative Law Judge issued a second PROPOSED ORDER (Proposed Order) on February 12, 2009.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Tule Smoke, Inc., (2) the United States, and (3) the Klamath Project Water Users. Responses to exceptions were timely filed by Tule Smoke, Inc.
4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 210, and are found to be persuasive in part; therefore, modifications are made to the Proposed Order as described in Sections A.6, A.7, and A.8, below.
5. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Issues" is adopted in its entirety.
 - c. The "Evidentiary Rulings" is adopted in its entirety.
 - d. The "Findings of Fact" is adopted with modifications, as set forth in Sections A.6, below.

- e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.7, below.
- f. The “Opinion” is replaced in its entirety, as set forth in Section A.8, below.
- g. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. Consistent with Sections A.6, A.7 and A.8, below, modified to limit the right to the portion of the claimed lands covered by the Quincy Brooks Swamp Land Deed dated February 1, 1886, and to clarify that the duty is defined in acre-feet per acre, rather than elevation.

6. **Findings of Facts.** The Proposed Order’s “Findings of Fact” section is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding.

a. Modified Proposed Order Finding of Fact 22

(22) The Act of 1887 further provided that all sales or conveyances of lands “made under the provisions of this Act or which shall hereafter be made of swamp lands, an easement of thirty feet on each side of all section lines shall be reserved for a public highway.” (*Id.* at §6.) ~~The Act of 1887 left unchanged the opportunity to reclaim and obtain a deed in accordance with the 1870 Act provisions. (Act of 1887.)~~

Reason for Modification: This “finding of fact” is an interpretation of law, and not a finding of fact. The deleted sentence contains an incorrect interpretation of law. These acts and their relationship to the evidence in this case are discussed in detail in the Opinion section, below.

b. Modified Proposed Order Finding of Fact 31

(31) On October 5, 1889, E. P. McCormack purchased the following relevant property in Township 40 South, Range 8 East, of the Willamette Meridian:

Section 14: S½, NW¼

Section 15: N½ SE¼, SE¼ NE¼, Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

(Ex. TS-10.) Mr. McCormack was a known rancher and cattleman.¹ (Ex. TS-63.)

¹ ~~More likely than not, Mr. McCormack grazed cattle and harvested hay on the claimed lands that he owned.~~

Reason for Modification: The text in the footnote is not supported by a preponderance of evidence in the record.

c. Modified Proposed Order Finding of Fact 32

(32) Sometime prior to June 1891, Mr. McCormack owned the claimed land in Section 1 of Township 40 South Range 8 East of the Willamette Meridian. (Ex. TS-11.) In June 1891, Mr. McCormack sold his properties to the Klamath Land Company.² (*Id.*)

Reason for Modification: The text in the footnote is not supported by a preponderance of evidence in the record.

d. Modified Proposed Order Finding of Fact 33

(33) On July 20, 1891, the Klamath Land Company purchased the following relevant property in Township 40 South, Range 8 East, of the Willamette Meridian:³

- Section 2: E $\frac{1}{2}$ E $\frac{1}{2}$, Lot 6
- Section 11: E $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, Lot 2
- Section 12: W $\frac{1}{2}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
- Section 14: NE $\frac{1}{4}$

(Ex. TS-22.)

Reason for Modification: It is unclear what the footnote refers to. The finding of fact is adequately cited in the body of the text.

e. Modified Proposed Order Finding of Fact 34

~~(34) Before the turn of the century, the entire area was used for haying and grazing. As a practical matter, grazing anywhere in the area, meant grazing all over. (Ex. TS-81.)~~

Reason for Modification: The finding of fact is not supported by a preponderance of evidence in the record. The finding is based on a statement by a witness born in 1922, and there is insufficient basis for treating the witness's hearsay statements as reliable.

² ~~Because the entire area was used for grazing and haying prior to the turn of the century, the reasonable inference is that the Klamath Land Company continued to make beneficial use of the claimed lands for grazing and haying purposes from 1891-1905.~~

³ ~~*Id.*~~

f. Modified Proposed Order Finding of Fact 35

(35) The early settlers and ranchers grazed cattle and harvested hay on the claimed lands, including the property located in Sections 1, 2, 10, 11, 14, 15, 22 and 23 of Township 40 South, Range 8 East, Willamette Meridian. Wildlife was abundant in the area. (*Id.*; Exs. TS-10, ~~TS-60~~, TS-61, TS-63, ~~TS-66~~, TS-76, TS-80, TS-81.)

Reason for Modification: This finding of fact is not supported by certain of the cited documents, and, as to a portion of the claimed lands, the evidence supports use only during a period prior to 1909 when there is no evidence the land in question was privately owned. TS-60 likely refers to lands that are not a part of the claim. TS-61 does not provide substantial evidence of water use prior to 1909. TS-66 does not refer to the claimed lands. TS-63 and TS-76 refer to use at a time prior to evidence of private ownership of the claimed lands.

g. Modified Proposed Order Finding of Fact 38

(38) Sometime prior to December 4, 1905, the Klamath Land Company owned Lots 6 and 7 in Section 10 in Township 40 South, Range 8 East, of the Willamette Meridian.⁴ (Ex. TS-12.)

Reason for Modification: It is unclear what the footnote refers to. The finding of fact is adequately cited in the body of the text.

h. Modified Proposed Order Finding of Fact 42

(42) On May 27, 1907, Mr. Ady negotiated with the Southern Pacific Railroad Company wherein Mr. Ady received a “hog-tight fence along the right of way” for the “purpose of livestock protection” in exchange for granting an easement to the Railroad along the eastern part of his property.⁵ (Exs. TS 41, TS-74.)

Reason for Modification: The inference made in the footnote is not supported by a preponderance of evidence in the record.

i. Finding of Fact 65 is added as follows:

(66) Claimant paid fees pursuant to ORS 539.081 of \$200 for wildlife and recreation uses. Under ORS 539.081, this is enough to cover a claimed rate of

⁴ *Id.*

⁵ ~~The reasonable inference is that Mr. Ady pastured livestock on the lands that he owned from 1905–1910.~~

diversion of 1 cubic foot per second (cfs). Claimant did not claim a rate of diversion, because the property is served by natural overflow.

Reason for Modification: Using evidence on the record, to make specific findings about the amount of fees paid by Claimant.

7. **Conclusions of Law.** Within the section titled “Conclusions of Law” of the Proposed Order, Conclusions #1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 23, 24, and 26 are modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

(1) There is sufficient information on the development of water on the places of use prior to February 24, 1909, to establish a vested pre-1909 water right for irrigation purposes on a portion of the claimed place of use.

(3) The record demonstrates intent to divert water prior to February 24, 1909 on a portion of the claimed place of use. ~~It is irrelevant whether the intent was to use water to grow plants and grasses for cattle or to grow plants and grasses for wildlife.~~

(4) A duty of 3.0 acre-feet per acre is supported by the evidence in the record. ~~The claimed rate, duty and total quantity of water is not in excess of the standard rate and duty and is supported by evidence of use prior to February 24, 1909.~~

(5) There is evidence to support the following claimed priority dates: February 1, 1883; ~~December 20, 1888; January 26, 1889; February 1, 1889; February 2, 1889; and March 11, 1889.~~ There is insufficient evidence to support the claimed date of “time in memoriam.”

(7) The evidence in the record establishes a pre-1909 water right on a portion of the claimed place of use. Construction of works is not required when the land is naturally irrigated.

(8) Construction of works is not required to establish a pre-1909 water right for irrigation use when the land is naturally irrigated.

(9) The record establishes intent to use natural overflow for irrigation on a portion of the claimed place of use before February 24, 1909.

(10) The quantity of water recognized herein ~~Claimant's use of water~~ is not wasteful for fish and wildlife habitat.

~~(11) The record supports the rate, duty, use, and 1,523.80 acres to be irrigated.~~

(13) The record establishes a season of use of April 1 through July ~~October~~ 31.

(14) Claimant has permissibly changed the purpose of use on the portion of the claimed place of use developed prior to 1909 from irrigation to wildlife use. The change of use from irrigation to recreation use is not permissible. The use of natural overflow irrigation to grow plants and grasses on the claimed lands has not changed.

(15) The permissible change in use from irrigation to wildlife use, as conditioned, does not create injury to other water users. Claimant's use and application of the water is not detrimental to contestants' priority water rights.

(17) "Over-appropriation" is not a relevant concept for determining the validity of claimed pre-1909 water rights. The Klamath River and its tributaries were not over-appropriated at the time Claimant began its use of the claimed water.

(18) The priority date for the recognized portion of the claim is set based on the date of a Swamp Land Deed that established beneficial use of water on the recognized portion of the claimed place of use. The current use was developed within a reasonable time after the claimed date of appropriation.

(19) It is irrelevant whether the purposes of the Klamath Reclamation Project may not be realized in the event that water used pursuant to the recognized portion of this claim interferes with the purpose of the Klamath Reclamation

Project. ~~because this claim is senior to the priority of the Klamath Reclamation Project.~~

(23) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of regulation of water use by the OWRD Watermaster. The claim is not barred to the extent it seeks water used by HID *et al.*

(24) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of regulation of water use by the OWRD Watermaster. It is irrelevant whether the water described in the 1910 permits for Four Mile and Fish Lakes held by Rogue River Valley Irrigation District and Medford Irrigation District should be “water available” for appropriation in the adjudication, because this claim is senior to the priority of the 1910 permits.

(26) Under Oregon law, beneficial use of natural overflow for the purpose of plant growth to support haying and grazing is not legally distinct as a purpose of use from beneficial use of natural overflow for the purpose of plant growth to support wildlife. It is unnecessary to determine whether Oregon’s modern definition of “irrigation” use is distinct from Oregon’s modern definition of “wildlife” use. Claimant’s claim is for “wildlife” and “recreation” uses, and must be determined solely on the validity of those claimed uses.

Reason for Modifications: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the record, as described in the modified opinion section, below, supports conclusions other than those in the 2009 Proposed Order.

8. **Opinion.** The Proposed Order’s “Opinion” section Order has been replaced in its entirety with the following:

The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

1. History of Use

The Claimants have submitted Swamp Land Deeds covering most of the claimed place of use. The effect of these deeds depends on the circumstances in which they were issued. The Swamp Land Act of 1870 (“1870 Act”) required proof of reclamation in order to obtain a deed. The definition of “reclamation” provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of \$1 per acre. The Swamp Land Act of 1878 (“1878 Act”) altered some of the provisions of the 1870 Act. An applicant under the 1870 Act could, under the terms of the 1878 Act, obtain a deed without proof of reclamation by payment of \$2.50 per acre. (Section 10, p46). Otherwise, an applicant under the 1870 Act would still need to submit proof of reclamation. An applicant making an application under the terms of the 1878 Act (i.e., making an initial application after the effective date of the 1878 Act) could obtain a deed by payment of a minimum of \$1 per acre without proof of reclamation. (Section 4, 42). Applications under the terms of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 (“1887 Act”) made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been “reclaimed or paid” by the effective date of the 1887 Act, with the exception that such applicants who were also “actual settlers on lands of 320 acres or less” and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. Deeds issued under this provision were limited to 640 acres. Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the 1878 Act (i.e., without requiring proof of reclamation). The 1887 Act went into effect on February 16, 1887.

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.⁶

⁶ The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than \$2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for \$2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the Swamp Land Deeds in this case, the deed issued to Quincy Brooks on February 1, 1886, constitutes proof of beneficial use for irrigation, because the deed was issued for 1947.48 acres on payment of \$1 per acre. (Ex. TS-1.) This indicates an application under the 1870 Act, when reclamation was still required. The claimed lands subject to this deed are entitled to a February 1, 1883 priority date.

The remaining Swamp Land Deeds at issue in this case do not constitute evidence of beneficial use for irrigation. Each of these deeds was issued after the effective date of the 1887 Act.

Although there is evidence supporting use on a portion of the claimed land as early as the 1860s, the evidence does not support application for transfer of these lands into private ownership during this period. While it is not always necessary for the owner of the land and the appropriator of the water to be the same in order to perfect a water right, there is no support for the position that private citizens could appropriate water for the benefit of swamp lands owned by the State before an application was filed for the lands under the Swamp Land Acts.

The evidence of beneficial use of water on the remainder of the claimed place of use after issuance of Swamp Land Deeds and prior to 1909 is insufficient to establish a water right. Generic statements about cattle grazing in the area of the claimed place of use prior to 1909 does not constitute a preponderance of evidence in support of the proposition that any part or all of the claimed place of use was beneficially used.

There is evidence that part of the claimed place of use was purchased by Ottolini and Belloni around 1900, with intent to build a dairy. The evidence indicates that the dairy was not built until 1917. (Ex. TS-59.) There is also a statement that Ottolini and Belloni leased this land to cattlemen until the dairy was constructed, but there is no indication as to when the leases began. (Ex. TS-80.)

There is evidence that the owner of the property at issue intended, as of 1907, to have a livestock fence built, but no evidence that this work was undertaken or completed, either prior to or after 1909. (Ex. TS-41.)

Finally, there is evidence that speaks to beneficial use on nearby properties, but not the property subject to this claim. The Kerns affidavit pertains to land west of Klamath River, and not the claimed place of use. (Ex. TS-60.) The Patterson affidavit pertains to the Furber property, not the claimed place of use. (Ex. TS-63.)

Because there is insufficient proof with respect to the remainder of the claimed place of use, the only portion of the claim that may be recognized is that portion covered by the Quincy Brooks Swamp Land Deed.

The United States contends that any water right that may have been established on the claimed place of use has been abandoned. The United States bears the burden of proving abandonment. There is insufficient evidence in the record to establish by a preponderance of the evidence that the recognized portion of the claim has been abandoned.

2. Purpose of Use

The claimed purposes of use of water are wildlife and recreation. As described above, a portion of the claimed place of use was beneficially used for irrigation prior to 1909. There is no evidence of pre-1909 wildlife or recreation uses. In order to recognize a right for wildlife or recreation uses, OWRD must find that the Claimant permissibly changed the purpose of use to wildlife or recreation uses at some point after 1909. The evidence shows that the purpose of use of the land changed after Claimant's acquisition of the claimed place of use in 1941. Some cattle grazing continued on the property during the 1940s. By the 1950s, the property was being exclusively used for wildlife and recreational uses.

At the time of the change in purpose of the use, a change of purpose of use of an unadjudicated right was permissible if the change did not create injury. *See In re North Powder River*, 75 Or 83, 90 (1914); *Whited v. Cavin*, 55 Or 98, 106 (1909). The changed use must not result in significantly increase the quantity or alter the timing of water use. Such changes would result in different quantities of water accessible to other users, a *de facto* injury. The change to wildlife use can be conditioned to avoid injury by imposing a similar season of use as would have been available for irrigation and by limiting the quantity of water to the amount reasonably necessary for growth of plants used for grazing.

The recreation use, however, cannot be so conditioned. Recreation implies a very different use pattern, with open water for boating, swimming, hunting, etc. *See OAR 690-300-0010(43)*. The claimed recreation use is denied.

3. Place of Use

The place of use for the recognized portion of the claim is as follows:

Township 40 South, Range 8 East W.M.

Section 14	NE $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	NW $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.0
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	40.0
	SW $\frac{1}{4}$ SW $\frac{1}{4}$ (Lot 2)	31.2
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	36.3
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	8.5
SW $\frac{1}{4}$ SE $\frac{1}{4}$	0.5	
Section 15	NE $\frac{1}{4}$ NE $\frac{1}{4}$ (Lot 16)	37.7
	NW $\frac{1}{4}$ NE $\frac{1}{4}$ (Lot 16)	4.0
	SW $\frac{1}{4}$ NE $\frac{1}{4}$ (Lot 15)	39.6
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	40.0
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	32.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$ (Lot 8)	11.7	

4. Duty

The claimed duty is 3.0 acre-feet per acre or as much water as is necessary to maintain the elevation of the water on the land between 4,085.00 and 4,086.5 feet above sea level. A duty of water based on an elevation is inappropriate for a right initially developed as an irrigation right, because it is inconsistent with the principles of natural overflow-based rights expressed in *In re Water Rights in Silvies River*, 115 Or 27, 65-66 (1925) and *Warner Valley Stock Co. v. Lynch*, 215 Or 523, 534-40 (1959). The evidence in the record supports a duty of 3.0 acre-feet per acre.

5. Season of Use

Claimant contends that the period of use is year round. The evidence does not support a year-round season. Instead, the evidence establishes that prior to 1909, the claimed lands were flooded in early spring from natural overflow from the Klamath River. The evidence further establishes that beginning in June, the floodwater receded from parts of the land which produced an abundant crop of vegetation for grazing and haying in the summer and fall. (Ex. TS-82 at 5.) It was not until the construction of the Keno damn that the claimed lands were flooded year round. The appropriate season of use is April 1 through October 31.

Reasons for Modifications: To apply the correct legal standards with respect to the effect of Swamp Land Deeds; to determine the appropriate priority dates, diversion rates,

season of use, and purposes of use based on the evidence in the record; to make various clarifications with respect to the legal reasoning supporting the conclusions of law.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” is adopted in its entirety.
 - b. The “Issues” is adopted in its entirety.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.6, above.
 - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.7, above.
 - f. The “Opinion” is replaced in its entirety, as set forth in Section A.8, above.
 - g. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. Consistent with Sections A.6, A.7 and A.8, above, the outcome of the Order has been modified to limit the right to the portion of the claimed lands covered by the Quincy Brooks Swamp Land Deed dated February 1, 1886, and to clarify that the duty is defined in acre-feet per acre, rather than elevation.
2. The elements of a pre-1909 claim are established in part. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 210 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 210

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 8 E

CLAIMANT: TULE SMOKE, INC
PO BOX 1708
KLAMATH FALLS, OR 97601

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE: WILDLIFE

DATE OF PRIORITY: FEBRUARY 1, 1883

NO SPECIFIC POINT OF DIVERSION:
NATURAL OVERFLOW FROM THE KLAMATH RIVER

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILDLIFE					
Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	8 E	WM	14	NE NW	
40 S	8 E	WM	14	NW NW	
40 S	8 E	WM	14	SW NW	
40 S	8 E	WM	14	SE NW	
40 S	8 E	WM	14	NE SW	
40 S	8 E	WM	14	NW SW	
40 S	8 E	WM	14	SW SW	2
40 S	8 E	WM	14	SE SW	
40 S	8 E	WM	14	NW SE	
40 S	8 E	WM	14	SW SE	
40 S	8 E	WM	15	NE NE	16
40 S	8 E	WM	15	NW NE	16
40 S	8 E	WM	15	SW NE	15
40 S	8 E	WM	15	SE NE	
40 S	8 E	WM	15	NE SE	
40 S	8 E	WM	15	NW SE	
40 S	8 E	WM	15	SE SE	8

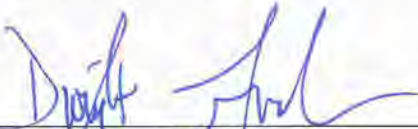
FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:

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 CONDITION WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication