

**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)
HERMAN AND DEBORAH ANDERSON) PARTIAL ORDER OF
) DETERMINATION
)
) Water Right Claim 226

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, HERMAN AND DEBORAH ANDERSON (Claimants) timely submitted a Statement and Proof of Claim (Claim 226) 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 and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 226 was submitted for a total of 875 acre-feet of water from the Sprague River, a tributary of the Williamson River, for irrigation of 95.1 acres, 150.2 practicably irrigable acres, and instream livestock watering of 100 head of cattle and 36 horses. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16 for irrigation and year-round for livestock watering. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 226 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 vested portion of the claim was approved for livestock watering and irrigation, but with a longer irrigation season than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimants timely filed Contest 1714 to the Claim and/or Preliminary Evaluation of Claim 226.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3517: 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 43.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3517. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3517 (Apr. 7, 2005).
9. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1714 (Settlement Agreement) thereby resolving the remaining contest to Claim 226.
10. On July 8, 2005, the Adjudicator withdrew Case 43 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.
2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3517 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3517 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3517 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 226 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 226
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 226, PAGE 131

CLAIMANT: HERMAN AND DEBORAH ANDERSON
PO BOX 333
BEATTY OR 97621

VESTED (DEVELOPED) PORTION

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

PURPOSE or USE:
IRRIGATION OF 95.2 ACRES FROM POD 1; AND
INSTREAM LIVESTOCK WATERING FOR 100 HEAD OF CATTLE AND 36 HORSES.

RATE OF USE:
1.272 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.27 CFS FROM POD 1 FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION;
AND

0.002 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF
USE, NOT TO EXCEED 1560 GALLONS PER DAY.

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:
4.3 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	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	12 E	WM	13	NE NW	6	1122 FEET SOUTH AND 726 FEET WEST FROM N¼ CORNER, SECTION 13
Sprague River	36 S	12 E	WM	13	NE NW		No specific point of diversion, livestock drink directly from the Sprague River
	36 S	12 E	WM	13	NW NW		
	36 S	12 E	WM	13	SW NW		
	36 S	12 E	WM	13	SE NW		
	36 S	12 E	WM	14	NE NE		
	36 S	12 E	WM	14	NW NE		

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	13	NE NW	3	14.40	POD 1
36 S	12 E	WM	13	NE NW	6		
36 S	12 E	WM	13	NW NW	4	36.00	
36 S	12 E	WM	13	NW NW	5		
36 S	12 E	WM	13	SW NW	12	8.40	
36 S	12 E	WM	13	SE NW	11	1.70	
36 S	12 E	WM	14	NE NE	1	22.30	
36 S	12 E	WM	14	NE NE	8		
36 S	12 E	WM	14	NW NE	2	12.40	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
36 S	12 E	WM	13	NE NW
36 S	12 E	WM	13	NW NW
36 S	12 E	WM	13	SW NW
36 S	12 E	WM	13	SE NW
36 S	12 E	WM	14	NE NE
36 S	12 E	WM	14	NW NE

INCHOATE PORTION

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

PURPOSE or USE:

IRRIGATION OF 150.2 PRACTICABLY IRRIGABLE ACRES, BEING 18.2 ACRES FROM POD 1, 10.5 ACRES FROM POD A, 106.5 ACRES FROM POD B, AND 15.0 ACRES FROM POD C.

RATE OF USE:

2.79 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.33 CFS FROM POD 1, 0.19 CFS FROM POD A, 1.91 CFS FROM POD B, AND 0.36 CFS FROM POD C.

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:

Use	Period
Practically Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

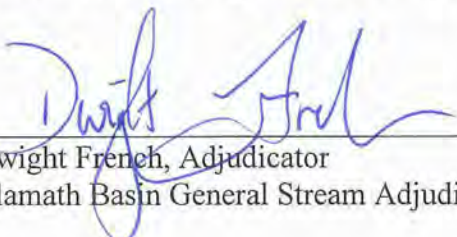
POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	12 E	WM	13	NE NW	6	1122 FEET SOUTH AND 726 FEET WEST FROM N¼ CORNER, SECTION 13
POD A	36 S	12 E	WM	13	NE SW	22	766 FEET SOUTH FROM C¼ CORNER, SECTION 13
POD B	36 S	12 E	WM	13	NE SW	19	246 FEET SOUTH AND 792 FEET WEST FROM C¼CORNER, SECTION 13
POD C	36 S	12 E	WM	14	SW NE	10	1188 FEET NORTH FROM C¼ CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	13	NE NW	3	18.2	POD 1
36 S	12 E	WM	13	NE NW	6		
36 S	12 E	WM	13	SE NW		0.8	POD A
36 S	12 E	WM	13	NE SW		9.7	
36 S	12 E	WM	13	NW NW	5	0.7	POD B
36 S	12 E	WM	13	SW NW	12	23.4	
36 S	12 E	WM	13	SW NW	13		
36 S	12 E	WM	13	SE NW		19.4	
36 S	12 E	WM	13	NE SW		3.6	
36 S	12 E	WM	13	NW SW	20	1.6	
36 S	12 E	WM	14	NE NE	8	13.0	
36 S	12 E	WM	14	NW NE		9.4	
36 S	12 E	WM	14	SW NE		8.8	
36 S	12 E	WM	14	SE NE	9	26.6	
36 S	12 E	WM	14	SE NE	16		
36 S	12 E	WM	14	NW NE		11.4	
36 S	12 E	WM	14	SW NE		3.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication