

**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
EDWARD LALO CASE; CASSIE LALO)	DETERMINATION
CASE; EDWARD L. CASE, IV; AND)	
TORINA CASE)	
_____)	Water Right Claim 232

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, EDWARD LALO CASE AND CASSIE LALO CASE timely submitted a Statement and Proof of Claim (Claim 232) 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 232 was submitted for a total of 242.9 acre-feet of water from the tributary springs and an unnamed creek, and the Sprague River, a tributary of the Williamson River, being 149.2 acre-feet for irrigation of 34.2 acres, 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 91.9 acre-feet for irrigation of 29.7 practicably irrigable acres, and 0.3 acre-feet for instream livestock watering of 20 head. 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 year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 232 attesting that the information contained in the claim is true.
4. A portion of the property appurtenant to Claim 232 was acquired by EDWARD L. CASE, IV, AND TORINA CASE. The Claimants in Claim 232 are EDWARD LALO CASE, CASSIE LALO CASE, EDWARD L. CASE, IV, AND TORINA CASE (Claimants). (See RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct 1, 1999 (Claim # 232, Page 142).

5. 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 for instream livestock watering and irrigation was approved, 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.
6. On May 3, 2000, the Claimants timely filed Contest 1719 to the Preliminary Evaluation of Claim 232.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3523: 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.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 48.
9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3523. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3523 (Apr. 7, 2005).
10. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1719 (Settlement Agreement) thereby resolving the remaining contest to Claim 232.
11. On July 8, 2005, the Adjudicator withdrew Case 48 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.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3523 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3523 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3523 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 232
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 232, PAGE 147

CLAIMANT: EDWARD LALO CASE
CASSIE LALO CASE
EDWARD L. CASE, IV
TORINA CASE
PO BOX 333
CHILOQUIN OR 97624

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:

DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED) FROM POD 1;

IRRIGATION OF 34.2 ACRES FROM POD 1; AND

INSTREAM LIVESTOCK WATERING OF 20 HEAD

RATE OF USE:

0.8704 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FROM POD 1 FOR DOMESTIC EXPANDED, MEASURED AT THE POINT OF DIVERSION,

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

0.0004 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 240 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
Domestic Expanded	January 1 - December 31
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	Remarks
POD 1	34 S	8 E	WM	24	SE SE	Domestic Expanded and Irrigation Only
Sprague River	34 S	8 E	WM	24	SW SE	Livestock Watering Only– No specific point of diversion for livestock watering, livestock drink directly from the Sprague River
	34 S	8 E	WM	24	SE SE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	8 E	WM	24	SE SE	POD 1

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	24	SW SE	16.7	POD 1
34 S	8 E	WM	24	SE SE	17.5	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
34 S	8 E	WM	24	SW SE
34 S	8 E	WM	24	SE SE

INCHOATE PORTION

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

PURPOSE or USE:

IRRIGATION OF 29.7 PRACTICABLY IRRIGABLE ACRES, BEING 7.6 ACRES FROM POD A, 4.0 ACRES FROM POD B, AND 18.1 ACRES FROM POD C.

RATE OF USE:

0.53 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.136 CFS FROM POD A, 0.071 CFS FROM POD B, AND 0.323 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
Practicably 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	Measured Distances
POD A	34 S	8 E	WM	24	SW SE	1320 FEET NORTH AND 660 FEET EAST FROM S1/4 CORNER, SECTION 24
POD B	34 S	8 E	WM	24	SE SE	1320 FEET NORTH AND 462 FEET WEST FROM SE1/4 CORNER, SECTION 24
POD C	34 S	8 E	WM	24	SE SE	528 FEET NORTH AND 528 FEET WEST FROM SE1/4 CORNER, SECTION 24

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	24	SW SE	7.6	POD A
34 S	8 E	WM	24	SE SE	4.0	POD B
34 S	8 E	WM	24	SE SE	4.5	POD C
34 S	8 E	WM	25	NE NE	1.8	
34 S	8 E	WM	25	NW NE	11.8	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication