

**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
MELVA FYE LIFETIME TRUST;	)	DETERMINATION
SOUTH VALLEY BANK AND	)	
TRUST, TRUSTEE	)	
_____	)	Water Right Claim 233

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, DIBBON J. COOK timely submitted a Statement and Proof of Claim (Claim 233) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 233 was submitted for the construction of a 110 acre-feet storage reservoir to store water from an unnamed creek and tributary springs in Cook’s Canyon, tributary to the Sprague River, and for the use of 708.0 acre-feet of water from the constructed reservoir, an unnamed creek and tributary springs in Cook’s Canyon for irrigation of 228.4 practicably irrigable acres. 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. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 233 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 claim was denied because the elements for a practicably irrigable acreage right were not established.
5. On May 3, 2000, the original claimant timely filed Contest 1720 to the Preliminary Evaluation of Claim 233.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3524: 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.<sup>1</sup>, 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 Pritchard<sup>2</sup>, Don Vincent<sup>3</sup>, 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 49.
8. The claim was transferred to THE MELVA FYE LIFETIME TRUST, SOUTH VALLEY BANK AND TRUST AS TRUSTEE (Claimant). *See* CHANGE OF OWNERSHIP FORM, Sept. 22, 2003.
9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3524. *See* NOTICE OF WITHDRAWAL OF CONTEST No. 3524 (Apr. 7, 2005).
10. On December 21, 2006, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1720 (Settlement Agreement)<sup>4</sup> thereby resolving the remaining contest to Claim 233.
11. On December 6, 2005, the Adjudicator withdrew Case 49 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD and the Claimant 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.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3524 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3524 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3524 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

<sup>4</sup> This December 21, 2006 Settlement Agreement revoked and replaced a prior stipulation resolving contests entered into on December 1, 2005. The prior stipulation contained an error in the name of the Claimant.

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

[Beginning of Water Right Claim Description]

**CLAIM NO. 233**  
FOR AN INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 233, PAGE 65

**CLAIMANT:** MELVA FYE LIFETIME TRUST  
SOUTH VALLEY BANK AND TRUST AS TRUSTEE  
803 MAIN ST  
KLAMATH FALLS, OR 97601

**CONSTRUCTION OF A RESERVOIR AND STORAGE OF WATER**

**SOURCE OF WATER:**  
AN UNNAMED CREEK AND TRIBUTARY SPRINGS, tributary to The SPRAGUE RIVER

**STORAGE FACILITY:** AN UNNAMED RESERVOIR

**MAXIMUM VOLUME:** 110 ACRE-FEET PER YEAR

**DATE OF PRIORITY:** OCTOBER 14, 1864

**PERIOD OF ALLOWED USE:**

Use of Stored Water	Water May be Diverted for Storage During this Period
Irrigation of Practicably Irrigable Acres	October 17 - February 28

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	10 E	WM	12	NW SE	1222 FEET SOUTH FROM C <sup>1</sup> / <sub>4</sub> CORNER, SECTION 12
35 S	10 E	WM	12	NW SE	660 FEET SOUTH AND 264 FEET EAST FROM C <sup>1</sup> / <sub>4</sub> CORNER, SECTION 12

**THE AREA TO BE SUBMERGED IS LOCATED AS FOLLOWS:**

Twp	Rng	Mer	Sec	Q-Q
35 S	10 E	WM	12	NE SW
35 S	10 E	WM	12	NW SE

**IRRIGATION OF PRACTICABLY IRRIGABLE ACRES**

**SOURCE OF WATER:**

AN UNNAMED RESERVOIR (DESCRIBED ABOVE), AND AN UNNAMED CREEK AND TRIBUTARY SPRINGS, tributary to The SPRAGUE RIVER

**PURPOSE OR USE**

IRRIGATION OF 228.4 PRACTICABLY IRRIGABLE ACRES, BEING 115.4 ACRES FROM POD A, 12.5 ACRES FROM POD B, AND 100.5 ACRES FROM POD C.

**RATE OF USE**

4.120 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 2.08 CFS FROM POD A, 0.23 CFS FROM POD B, AND 1.81 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	Remarks
POD A	35 S	10 E	WM	12	NW SE	1222 FEET SOUTH FROM C¼ CORNER, SECTION 12	Same location as POD C
POD B	35 S	10 E	WM	12	NW SE	660 FEET SOUTH AND 264 FEET EAST FROM C¼ CORNER, SECTION 12	
POD C	35 S	10 E	WM	12	NW SE	1222 FEET SOUTH FROM C¼ CORNER, SECTION 12	Same location as POD A


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

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	10 E	WM	11	NE SE	13.3	POD A
35 S	10 E	WM	11	SW SE	1.8	
35 S	10 E	WM	11	SE SE	31.0	
35 S	10 E	WM	12	NE SW	16.7	
35 S	10 E	WM	12	NW SW	20.6	
35 S	10 E	WM	12	SW SW	3.2	
35 S	10 E	WM	14	NE NE	15.9	
35 S	10 E	WM	14	NW NE	12.9	

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	10 E	WM	12	NE SW	3.3	POD B
35 S	10 E	WM	12	NW SE	9.2	
35 S	10 E	WM	12	SW SW	9.7	POD C
35 S	10 E	WM	12	SE SW	17.0	
35 S	10 E	WM	12	NW SE	13.7	
35 S	10 E	WM	13	NE NW	24.3	
35 S	10 E	WM	13	NW NW	35.8	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication