

**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)	CORRECTED PARTIAL ORDER OF
ROBERT RATHBORNE)	DETERMINATION
_____)	
)	Water Right Claim 234

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, WILBUR CRIM timely submitted a Statement and Proof of Claim (Claim 234) 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 a vested Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 234 was submitted for a total of 39.0 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 37.4 acre-feet for irrigation of 8.7 acres, and 0.1 acre-feet for direct livestock watering of 10 horses from the Williamson River. The duty claimed for current irrigation is 4.3 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 234 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 234 was transferred to non-Indian successors, T. C. AND SUE LITTLEJOHN, TRUSTEES OF THE LITTLEJOHN LIVING TRUST. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 5183 (Feb. 11, 1997) (Claim # 234, Pages 0069-0071). A non-Indian successor to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
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 irrigation and livestock watering was approved, but with a longer irrigation season than claimed.

6. On May 8, 2000, the United States of America timely filed Contest 3736 to the Claim and Preliminary Evaluation of Claim 234.
7. On May 8, 2000, the Klamath Tribes timely filed Contest 4201 to the Claim and Preliminary Evaluation of Claim 234.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 240.
9. On March 1, 2004, the Klamath Tribes withdrew Contest 4201. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Mar.1, 2004).
10. The property appurtenant to Claim 234 was transferred to ROBERT RATHBORNE (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M03, PAGE 48473 (July 11, 2003) and CHANGE OF OWNERSHIP FORM (Aug. 19, 2004).
11. On October 12, 2004, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 234.
12. On October 18, 2004, the Adjudicator withdrew Case 240 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, and the United States of America, is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON 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 234 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 234
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 234, PAGE 019

CLAIMANT: ROBERT RATHBORNE
PO BOX 1
HALF MOON BAY, CA 94019

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE: IRRIGATION OF 8.7 ACRES.

RATE OF USE:
0.22 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:


Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	30	NE NE	2

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	30	NE NE	2	8.5
35 S	7 E	WM	30	NE NE	9	0.2

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication