

**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
JOY EFFMAN AND DORIS EFFMAN,)	DETERMINATION
UNDER THE ESTATE OF GEORGE)	
EFFMAN)	
_____)	Water Right Claim 235
)	

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, JOY AND DORIS EFFMAN, UNDER THE ESTATE OF GEORGE EFFMAN (Claimants) timely submitted a Statement and Proof of Claim (Claim 235) 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 235 was submitted for a total of 876.7 acre-feet of water from Fort Creek via the Fort Creek Canal, a tributary of the Wood River, being 813.6 acre-feet for irrigation of 189.2 acres, 61.3 acre-feet for irrigation of 19.8 practicably irrigable acres, and 1.8 acre-feet for livestock watering of 135 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 livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 235 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 claimed source was previously adjudicated as a part of the Wood River.
5. On May 3, 2000, the Claimants timely filed Contest 1721 to the Preliminary Evaluation of Claim 235.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3525: 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 50.
8. On May 6, 2003, Claim 235 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
9. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
10. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 9, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
11. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3525. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3525 (Apr. 7, 2005).
12. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1721 (Settlement Agreement) thereby resolving the remaining contest to Claim 235.
13. On July 8, 2005, the Adjudicator withdrew Case 50 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3525 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3525 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3525 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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.
3. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
4. 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.
5. Based on the file and record herein, IT IS ORDERED that Claim 235 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 235
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 235, PAGE 84

CLAIMANT: JOY EFFMAN AND DORIS EFFMAN,
UNDER THE ESTATE OF GEORGE EFFMAN
2768 18TH ST
SACRAMENTO CA 95818

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 189.2 ACRES AND LIVESTOCK WATERING OF 135 HEAD.

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

4.67 CFS FOR IRRIGATION OF MEASURED AT THE POINT OF DIVERSION, AND
0.003 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO
EXCEED 1620 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH
HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY
NECESSARY TO TRANSPORT THE WATER.

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	Remarks
Fort Creek	33 S	7.5 E	WM	26	NW NW	Point of Diversion into Canal
Fort Creek Canal Rediversion 1	34 S	7.5 E	WM	2	NE SE	Point of Rediversion

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	2	NE SW	40.0	Fort Creek Via Fort Creek Canal Rediversion 1
34 S	7.5 E	WM	2	SE SW	20.0	
34 S	7.5 E	WM	2	NE SE	15.9	
34 S	7.5 E	WM	2	NW SE	40.0	
34 S	7.5 E	WM	2	SW SE	40.0	
34 S	7.5 E	WM	2	SE SE	33.3	

INCHOATE PORTION

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE or USE:

IRRIGATION OF 19.8 PRACTICABLY IRRIGABLE ACRES FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION A.

RATE OF USE:

0.36 CFS FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION A, 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:

3.1 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
Fort Creek	33 S	7.5 E	WM	26	NW NW	NONE GIVEN	Point of Diversion into Canal
Fort Creek Canal Rediversion A	34 S	7.5 E	WM	2	NE SE	200 FEET SOUTH AND 557 FEET WEST FROM E¼ CORNER, SECTION 2	Point of Rediversion from Canal

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	2	NE SE	13.4	Fort Creek Via Fort Creek Canal Rediversion A
34 S	7.5 E	WM	2	SE SE	6.4	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication