

**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
MARK D. ANDERTON)	DETERMINATION
)	
_____)	Water Right Claim 236

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, CLOVERINE EGGS MAN [ESTATE OF WALTER EGGS MAN] timely submitted a Statement and Proof of Claim (Claim 230) 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 236 was submitted for a total of 354.1 acre-feet of water from the Sprague River, a tributary of the Williamson River, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 245.5 acre-feet for irrigation of 57.1 acres, 107.0 acre-feet for irrigation of 35.1 practicably irrigable acres, and 0.1 acre-feet for livestock watering of 6 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 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 236 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 236 was transferred to a non-Indian successor, MARK D. ANDERTON (Claimant). *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M96, PAGE 26703 (Aug. 28, 1996) (Claim # 236, Page 059), and CHANGE OF OWNERSHIP FORM (Jan. 28, 1997) (Claim # 236, Page 058). 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 livestock watering and irrigation was approved, but with a shorter irrigation season than claimed. The inchoate portion of the claim was denied, but it was acknowledged that the claimant has the right to further develop the use of water with reasonable diligence.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3506: 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., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
7. On May 8, 2000, the United States of America timely filed Contest 3737 to the Claim and Preliminary Evaluation of Claim 236.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4202 to the Claim and Preliminary Evaluation of Claim 236.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 241.
10. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3506. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3506 (Apr. 8, 2004).
11. On July 26, 2004, the Klamath Tribes withdrew Contest 4202. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (July 26, 2004).
12. On May 12, 2005, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contest to Claim 236.
13. On May 17, 2005, the Adjudicator withdrew Case 241 from the Office of Administrative Hearings.
14. Beneficial use of water has been made on 35.1 practicably irrigable acres with reasonable diligence.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3506 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3506 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3506 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 236

FOR A VESTED RIGHT

CLAIM MAP REFERENCE: CLAIM # 236 SETTLEMENT MAP (April 5, 2005)

CLAIMANT: MARK D. ANDERTON
PO BOX 380
CHILOQUIN OR 97624

SOURCE OF WATER:

The SPRAGUE RIVER, tributary to WILLIAMSON RIVER, and
A SLOUGH on the SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE OR USE:

DOMESTIC FOR ONE HOUSEHOLD; IRRIGATION OF 92.1 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 6 HEAD.

RATE OF USE:

2.31 CUBIC FEET PER SECOND (CFS) FROM THREE POINTS OF DIVERSION MEASURED AT THE POINTS OF DIVERSION AS FOLLOWS:

0.01 CFS FOR DOMESTIC USE, AND

2.30 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING.

NO MORE THAN TWO OF THE THREE POINTS OF DIVERSION, BEING PORTABLE PUMP POD 1, POD 2-A, AND POD 2-B, MAY BE USED TOGETHER AT ANY ONE GIVEN TIME FOR ANY COMBINATION OF USES

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:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Portable Pump POD 1	Sprague River	34 S	8 E	WM	23	NW SE	NONE GIVEN – PORTABLE PUMP
POD 2-A	A Slough on the Sprague River	34 S	8 E	WM	23	NW SE	616 FEET SOUTH AND 1262 FEET EAST FROM C1/4 CORNER, SECTION 23
POD 2-B		34 S	8 E	WM	23	NW SE	221 FEET SOUTH AND 516 FEET EAST FROM C1/4 CORNER, SECTION 23


THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	8 E	WM	23	SW NE	PORTABLE PUMP POD 1, POD 2-A and/or POD 2-B No more than two PODs may be used together at any one time for any combination of uses.

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	23	NW NE	24.4	PORTABLE PUMP POD 1, POD 2-A and/or POD 2-B No more than two PODs may be used together at any one time for any combination of uses.
34 S	8 E	WM	23	SW NE	13.6	
34 S	8 E	WM	23	NW SE	38.5	
34 S	8 E	WM	23	SW SE	15.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication