

**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
FRANCIS LOVING TRUST)	DETERMINATION
HILDA FRANCIS, TRUSTEE)	
_____)	
)	Water Right Claim 238

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, JESSE FRANCIS (ON BEHALF OF THE FRANCIS LOVING TRUST, HILDA FRANCIS, TRUSTEE) (Claimant) timely submitted a Statement and Proof of Claim (Claim 238) 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 and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 238 was submitted for a total of 130.5 acre-feet of water from the Williamson River, a tributary Upper Klamath Lake, for irrigation of 42.1 practicably irrigable acres with a season of use March 1 through October 16. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 238 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 Claimant timely filed Contest 1722 to the Preliminary Evaluation of Claim 238.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3526: 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 60.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3526. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3526 (Apr. 7, 2005).
9. On August 3, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1722 (Settlement Agreement) thereby resolving the remaining contest to Claim 238.
10. On August 4, 2005, the Adjudicator withdrew Case 60 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.
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 238 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 238
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 238, PAGE 66

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3526 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3526 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3526 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

CLAIMANT: FRANCIS LOVING TRUST
 HILDA FRANCIS, TRUSTEE
 PO BOX 213
 CHILOQUIN OR 97624

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

PURPOSE or USE:

IRRIGATION OF 42.1 PRACTICABLY IRRIGABLE ACRES, BEING 17.6 ACRES FROM POD A, AND 24.5 ACRES FROM POD B.

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

RATE OF USE:

0.76 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION, BEING 0.32 FROM POD A, AND 0.44 CFS FROM POD B.

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.

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

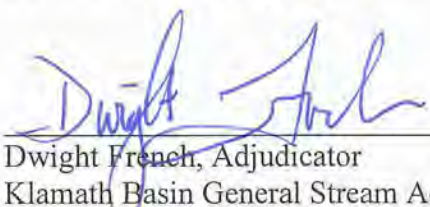
POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	31 S	10 E	WM	24	SE NE	370 FEET NORTH AND 400 FEET WEST FROM E ¹ / ₄ CORNER, SECTION 24
POD B	31 S	10 E	WM	24	SE NE	726 FEET NORTH AND 792 FEET WEST FROM E ¹ / ₄ CORNER, SECTION 24

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
31 S	10 E	WM	24	NE NE	4.8	POD A
31 S	10 E	WM	24	SE NE	12.8	
31 S	10 E	WM	24	NE NE	13.6	POD B
31 S	10 E	WM	24	SE NE	10.9	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication