

**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 |
| ROBERTA FROST |) | DETERMINATION |
| |) | |
| _____ |) | Water Right Claim 240 |

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, ROBERTA FROST¹ (Claimant) timely submitted a Statement and Proof of Claim (Claim 240) 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 240 was submitted for a total of 7.1 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 1.5 acre-feet for domestic use for one household, including irrigation of 0.5 acre of lawn and garden; and 5.6 acre-feet for irrigation of 1.8 practicably irrigable acres. 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 March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 240 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 “no existing uses were claimed,” and the inchoate portion of 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 1723 to the Preliminary Evaluation of Claim 240.

¹ This claim was filed under the name of Roberta Garcia. Roberta Garcia changed her name to Roberta Frost. See RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct 6, 1999 (Claim # 240, Page 074).

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3527: 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.², 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 Pritchard³, Don Vincent⁴, 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 61.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3527. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3527 (Apr. 7, 2005).
9. On August 3, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1723 (Settlement Agreement) thereby resolving the remaining contest to Claim 240.
10. On August 4, 2005, the Adjudicator withdrew Case 61 from the Office of Administrative Hearings.
11. OWRD finds that the point of diversion listed in the Settlement Agreement, being GOVERNMENT LOT 11, SW¼SE¼, SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., is incorrectly described. The point of diversion listed in the claim (Claim # 240, Page 081) is the SE¼SE ¼, Section 27, Township 34 South, Range 7 East. Furthermore, this is consistent with the measured distances given for the point of diversion, being 1299 FEET NORTH AND 1238 FEET WEST OF SE ¼ CORNER, SECTION 27.
12. OWRD finds that the place of use listed in the Settlement Agreement, being GOVERNMENT LOT 11, SW¼SE¼, SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., is incorrectly described. The title report submitted on August 5, 1992 (Claim # 240, Page 026) describes the subject property as: “The South 215.9 feet of that tract of land described as the South 660 feet except the West 1100 feet of Government Lot 6, Section 27, Township 34 South, Range 7 East , Willamette Meridian, Klamath

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3527 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

³ Berlva Pritchard voluntarily withdrew from Contest 3527 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3527 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

County, Oregon.” Government Lot 6 is located within the NESE and NWSE quarters of Section 27. Furthermore, a map submitted with the title report (Claim # 240, Page 029) highlighted the subject property and shows the property is consistent with Klamath County Tax Lot 1200. Tax Lot 1200 lies in the SW¼ of the NE¼SE¼ and the SE¼ of the NW¼SE¼, all within Government Lot 6.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. the incorrect legal description of the point of diversion as described in Finding 11, above; the legal description of the point of diversion is corrected to SE¼SE¼ , SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., and
 - b. the incorrect legal description to the place of use as described in Finding 12, above; the legal description of the place of use is corrected to TAX LOT 1200 WITHIN GOVERNMENT LOT 6, (NE¼SE¼, AND NW¼SE¼), SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M.
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 240 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 240
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 240, PAGE 67

CLAIMANT: ROBERTA FROST
3820 GRANADA WAY
KLAMATH FALLS, OR 97601

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED)

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) FOR DOMESTIC EXPANDED MEASURED AT THE POINT OF DIVERSION,

PERIOD OF ALLOWED USE:

| Use | Period |
|-------------------|-------------------------|
| Domestic Expanded | January 1 - December 31 |

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 34 S | 7 E | WM | 27 | SE SE | 1299 FEET NORTH AND 1238 FEET WEST FROM SE¼ CORNER, SECTION 27 |

THE PLACE OF USE IS LOCATED AS FOLLOWS:

| DOMESTIC EXPANDED | | | | | | |
|-------------------|-----|-----|-----|-------|------|---------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Tax Lot |
| 34 S | 7 E | WM | 27 | NE SE | 6 | 1200 |
| 34 S | 7 E | WM | 27 | NW SE | | |

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 1.3 PRACTICABLY IRRIGABLE ACRES.

RATE OF USE:

0.03 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:

3.1 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 POINT OF DIVERSION IS LOCATED AS FOLLOWS:


| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 34 S | 7 E | WM | 27 | SE SE | 1299 FEET NORTH AND 1238 FEET WEST FROM SE¼ CORNER, SECTION 27 |

THE PLACE OF USE IS LOCATED AS FOLLOWS:

| PRACTICABLY IRRIGABLE ACREAGE | | | | | | | |
|-------------------------------|-----|-----|-----|-------|------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Tax Lot | Acres |
| 34 S | 7 E | WM | 27 | NE SE | 6 | 1200 | 1.3 |
| 34 S | 7 E | WM | 27 | NW SE | | | |

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication