

**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
AMBROSE W. MCAULIFFE, AND)	DETERMINATION
SUSAN J. MCAULIFFE)	
_____)	Water Right Claim 242

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE PROPOSED ORDER**

1. Claim 242 (Claimants: AMBROSE W. MCAULIFFE AND SUSAN J. MCAULIFFE) and its associated contests (3281, 3507, 3811, and 4203) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 242.
2. On May 6, 2003, Claim 242 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.
3. 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.
4. 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 3, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 242 on April 5, 2007.
6. No exceptions were filed to the Proposed Order.

7. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.8, below.
 - c. The “Issues” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.9, below.
 - e. The “Conclusions of Law” is adopted in its entirety.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.10, below.
 - g. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 242. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **Evidentiary Rulings.** Within the section titled “Evidentiary Rulings” of the Proposed Order, the first paragraph is modified as follows:

The STIPULATION BETWEEN AMBROSE MCAULIFFE, SUSAN MCAULIFFE, AND THE UNITED STATES AND WITHDRAWAL OF CONTEST BY THE UNITED STATES for Case 242, dated November 29, 2005, (Stipulation) is added to the list of items that were admitted into the record.

Reason for Modification: To correct an omission from the list of Evidentiary Rulings. Although the Stipulation was never explicitly admitted into the record, the Administrative Law Judge concluded that the claim should be allowed according to the terms of the Stipulation. (Proposed Order at 4 (Item 4), 10.) As a result, the adjudicator treats the failure to explicitly admit the stipulation into the record as an oversight and treats the Stipulation as if it had been admitted into the record at hearing.

9. **Findings of Fact.** The first sentence in Proposed Order Finding of Fact #5 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

(5) In their Response to Claimants’ Closing Argument, KPWU do not dispute the *Walton* water rights outlined in the diversion for ~~93.9~~ 98.9 acres, but argue that in regards to the 43 acres from the other diversion, Claimants have not shown that they were the first non-Indian successors and therefore, they have not established *Walton* water rights for these acres.

Reason for Modification: OWRD has determined that the ALJ’s finding regarding the number of acres not disputed in the Claimant’s Closing Argument is not supported by a preponderance of evidence on the record. (See KLAMATH PROJECT WATER USERS’ RESPONSE TO CLAIMANTS’ CLOSING ARGUMENT at 3)

10. **Opinion.**

- a. Within the section titled “Opinion” of the Proposed Order, OWRD removed the ALJ’s discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

Reason for Modifications: To correct and clarify the elements of a Walton water right.

- b. Within the section titled “Opinion” of the Proposed Order, the following paragraph is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

The only remaining contests are from KPWU and Claimants. KPWU do not dispute that Claimants have established *Walton* water rights to the ~~93.9~~ 98.9 acres from one diversion point, as outlined in the stipulation between Claimants and the United States. KPWU argue that Claimants’ *Walton* water rights are limited to the amount in the stipulation, and Claimants agree, so there is no dispute regarding Claimants’ *Walton* water rights on the ~~93.9~~ 98.9 acres.

Reason for Modifications: To provide consistency with Proposed Order Finding of Fact #5.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
- a. The “History” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.8, above.
 - c. The “Issues” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.9, above.
 - e. The “Conclusions of Law” is adopted in its entirety.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.10, above.
 - g. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 242. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
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. Based on the file and record herein, IT IS ORDERED that Claim 242 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 242

CLAIM MAP REFERENCE:

CLAIM # 242, PAGE 28; OWRD INVESTIGATION MAP – T 33 S, R 7.5 E

CLAIMANT: AMBROSE W. MCAULIFFE

SUSAN J. MCAULIFFE

PO BOX 456

KLAMATH FALLS OR 97626

SOURCE OF WATER:

FORT CREEK, tributary to the WOOD RIVER, and
CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:

IRRIGATION OF 141.9 ACRES, BEING 43.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM FORT CREEK POD AND 98.9 ACRES FROM CROOKED CREEK POD; LIVESTOCK WATERING FROM CROOKED CREEK.

ANY COMBINATION OF LIVESTOCK WATERING IS LIMITED TO A MAXIMUM OF 200 HEAD AT ANY ONE TIME.

RATE OF USE:

3.5737 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.1 CFS FROM FORT CREEK POD FOR IRRIGATION OF 43.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION;

2.47 CFS FROM CROOKED CREEK POD FOR IRRIGATION OF 98.9 ACRES, MEASURED AT THE POINT OF DIVERSION; AND

0.0037 CFS FROM CROOKED CREEK INCLUDING ITS DITCHES FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2400 GALLONS PER DAY.

DIVERSION OF STOCK WATER FROM CROOKED CREEK 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, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

FORT CREEK POD:

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

CROOKED CREEK POD:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 – October 16
Incidental Livestock Watering from Fort Creek	March 1 – October 16
Livestock Watering from Crooked Creek	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
Fort Creek POD	33 S	7.5 E	WM	26	SW NW
Crooked Creek POD	33 S	7.5 E	WM	26	SW NE


THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING FROM FORT CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	26	SE NW	17.9
33 S	7.5 E	WM	26	NE SW	18.0
33 S	7.5 E	WM	26	SE SW	7.1

IRRIGATION and LIVESTOCK WATERING FROM CROOKED CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	26	SW NE	3.4
33 S	7.5 E	WM	26	SE NW	11.2
33 S	7.5 E	WM	26	NE SW	21.1
33 S	7.5 E	WM	26	SE SW	31.0
33 S	7.5 E	WM	26	NW SE	15.9
33 S	7.5 E	WM	26	SW SE	16.3

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication