

**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
MARILYN HALL)	DETERMINATION
)	
_____)	Water Right Claim 244

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, MARILYN HALL (Claimant) timely submitted a Statement and Proof of Claim (Claim 244) 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 244 was submitted for a total of 8.6 acre-feet of water from the Williamson River, a tributary of the Upper Klamath Lake, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, and 7.1 acre-feet for irrigation of 2.3 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 244 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 vested portion of the claim was denied because the elements of an Allottee claim were not established, 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 1726 to the Preliminary Evaluation of Claim 244.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 41.
7. On July 2, 2003, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1726 (Settlement Agreement) thereby resolving the only contest to Claim 244.
8. On July 3, 2003, the Adjudicator withdrew Case 41 from the Office of Administrative Hearings.
9. Based on the water use stipulated in the Settlement Agreement (a maximum total of 7.1 acre-feet per year for irrigation of 2.3 practically irrigable acres), OWRD finds a duty of 3.1 acre-feet per acre.
10. OWRD finds that the irrigation season for practically irrigable acres, March 1 to October 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed an irrigation season March 1 through October 16.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant and OWRD is adopted and incorporated as if set forth fully herein, with the exception of the irrigation season for practically irrigable acres that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 10, above); the irrigation season recognized herein is consistent the Claimant's original claim.
2. The elements of an Allottee claim have been established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. Because there is no evidence on the record to the contrary, the domestic rate of water is the standard rate for domestic use (0.01 cfs per dwelling) as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION.
5. 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 244 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 244
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 244, PAGE 067

CLAIMANT: MARILYN HALL
7118 RUTH'S COURT
KLAMATH FALLS, OR 97603

VESTED (DEVELOPED) PORTION

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

PURPOSE or USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN
AND GARDEN (DOMESTIC EXPANDED) FROM POD 1

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) FROM POD 1 MEASURED AT THE POINT OF
DIVERSION; NOT TO EXCEED A TOTAL OF 1.5 ACRE-FEET PER YEAR

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:

POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	34 S	7 E	WM	27	SE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7 E	WM	27	SW SE	0.5	POD 1

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 2.3 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.04 CFS FROM POD A, MEASURED AT THE POINT OF DIVERSION; NOT TO EXCEED 7.1 ACRE-FEET PER YEAR.

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
Practically Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:


POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	34 S	7 E	WM	27	SE SE	1073 FEET NORTH AND 1230 FEET WEST FROM SE CORNER, SECTION 27

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7 E	WM	27	SW SE	2.3	POD A

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication