

**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
KATHLEEN HATCHER-MITCHELL,)	DETERMINATION
STEPHEN D. HESS, AND)	
MELISSA K. HESS)	
_____)	
)	Water Right Claim 247

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, KATHLEEN HATCHER¹, aka KATHLEEN HATCHER-MITCHELL, (ON BEHALF OF HERSELF, STEPHEN D. HESS AND MELISSA K. HESS) (Claimants) timely submitted a Statement and Proof of Claim (Claim 247) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 247 was submitted for a total of 66.3 acre-feet of water from the Larkin Creek, a tributary of the Williamson River for irrigation of 21.7 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 247 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.

¹ The name on the original claim was incorrectly listed as Kathleen Hatchaway, and Stephen D. Hess and Melissa K. Hess were added as original claimants (See LETTER, Nov. 16, 1992, Claim # 247, Page 14).

5. On May 3, 2000, the Claimants timely filed Contest 1728 to the Preliminary Evaluation of Claim 247.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3531: 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 65.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3531. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3531 (Apr. 7, 2005).
9. On August 3, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1728 (Settlement Agreement) thereby resolving the remaining contest to Claim 247.
10. On August 4, 2005, the Adjudicator withdrew Case 65 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants 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.

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3531 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

³ Berlva Pritchard voluntarily withdrew from Contest 3531 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3531 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

4. Based on the file and record herein, IT IS ORDERED that Claim 247 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 247
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 247, PAGE 88

CLAIMANT: KATHLEEN HATCHER-MITCHELL
PO BOX 1185
CHILOQUIN, OR 97624

STEPHEN D. HESS
MELISSA K. HESS
PO BOX 111
BEATTY, OR 97621

SOURCE OF WATER: LARKIN CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

IRRIGATION OF 21.6 PRACTICABLY IRRIGABLE ACRES, BEING 7.8 ACRES FROM POD A, AND 13.8 ACRES FROM POD B.

RATE OF USE:

0.39 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.14 CFS FROM POD A, AND 0.25 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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

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	34 S	7 E	WM	11	NW NE	594 FEET SOUTH AND 330 FEET EAST FROM N ¹ / ₄ , SECTION 11
POD B	34 S	7 E	WM	11	NE NW	1320 FEET SOUTH AND 198 FEET WEST FROM N ¹ / ₄ CORNER, SECTION 11

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	11	NW NE	6.8	POD A
34 S	7 E	WM	11	NE NW	1.0	POD A
34 S	7 E	WM	11	NW NE	2.4	POD B
34 S	7 E	WM	11	NE NW	11.4	POD B

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication