

**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
STEPHEN HESS AND)	DETERMINATION
MELISSA HESS)	
_____)	
)	Water Right Claim 248

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, STEPHEN HESS AND MELISSA HESS (Claimants) timely submitted a Statement and Proof of Claim (Claim 248) 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 a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 248 was submitted for a total of 338.7 acre-feet of water from the Sprague River via Modoc Point Irrigation District canal system, a tributary of the Williamson River, being 325.5 acre-feet for irrigation of 75.7 acres, 12.7 acre-feet for irrigation of 4.1 practicably irrigable acres, and 0.5 acre-feet for livestock watering of 40 head. The duty claimed for current irrigation is 4.3 acre-feet per acre, and 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 livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 248 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 for livestock watering and irrigation was approved, but with a shorter period of use for livestock watering and longer irrigation season than 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 Claimants timely filed Contest 1729 to the Preliminary Evaluation of Claim 248.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3532: 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. The Office of Administrative Hearings designated these matters as Case 51, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003).
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3532. *See* NOTICE OF WITHDRAWAL OF CONTEST NOS. 3532, 3547, 3550, AND 3569 (Apr. 7, 2005).
9. On December 1, 2006, the Claimants timely submitted an amendment to Claim 248 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).
10. No contests or claims of injury were filed to the Claimant’s December 1, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.
11. On November 9, 2007, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1729 (Settlement Agreement) thereby resolving the remaining contest to Claim 248.
12. On November 14, 2007, the Adjudicator withdrew Case 51 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3532 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3532 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3532 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. OWRD finds that the place of use described in Claim 248 was successfully withdrawn from Modoc Point Irrigation District's Claim 84. The settlement condition precedent was met on November 9, 2007 with a settlement agreement between the Claimants of Claim 248, OWRD and the Klamath Project Water Users. *See* STIPULATION TO RESOLVE CONTEST 1729 (Nov. 9, 2007). *See also* STIPULATION TO RESOLVE CONTESTS [Claim 84] (Nov. 21, 2007).

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. The Claimants' timely amendment, made on December 1, 2006, pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimants' claim.
4. The relocated point of diversion on the Williamson River, within LOT 10, NENE, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21, is approved.
5. The diversion of water from the original point of diversion at the Chiloquin Dam on the Sprague River, located within the SESE, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 125 FEET EAST FROM NW CORNER, SESE, SECTION 3, is no longer authorized; removal of the Chiloquin Dam was completed on August 21, 2008.
6. The quantity of water diverted at the relocated point of diversion on the Williamson River must not exceed the quantity of water lawfully available at the original point of diversion at the Chiloquin Dam on the Sprague River.
7. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water 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.
8. 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.

9. Based on the file and record herein, IT IS ORDERED that Claim 248 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 248
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 248, PAGE 170 and CLAIM # 248, MYLAR MAP FILED DECEMBER 1, 2006

CLAIMANT: STEPHEN HESS AND MELISSA HESS
PO BOX 111
BEATTY, OR 97621

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: The SPRAGUE RIVER, tributary to THE WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 75.7 ACRES AND LIVESTOCK WATERING OF 40 HEAD.

RATE OF USE:
1.8707 CUBIC FEET PER SECOND (CFS), IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, AS FOLLOWS:

1.87 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.0007 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 480 GALLONS PER DAY.

DIVERSION OF STOCK WATER 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.

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:
4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 16
Livestock Watering	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
35 S	7 E	WM	32	NE NE	1	MODOC POINT IRRIGATION DISTRICT CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	32	NE NE	1	15.7
35 S	7 E	WM	32	NE NE	8	20.0
35 S	7 E	WM	32	SE NE	9	20.0
35 S	7 E	WM	32	SE NE	16	20.0

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

INCHOATE PORTION

SOURCE OF WATER: The SPRAGUE RIVER, tributary to THE WILLIAMSON RIVER

PURPOSE or USE: IRRIGATION OF 4.1 PRACTICABLY IRRIGABLE ACRES.

RATE OF USE:

0.07 CUBIC FOOT PER SECOND (CFS) TO BE MEASURED AT THE POINT OF DIVERSION, IF AVAILABLE AT THE ORIGINAL 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 POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
35 S	7 E	WM	32	NE NE	1	NONE GIVEN

THE PLACE OF USE IS LOCATED AS FOLLOWS:


PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	32	NE NE	1	4.1

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication