

**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
HILDEGARD HICKS AND	)	DETERMINATION
THE ESTATE OF JAMES HICKS	)	
_____	)	
	)	Water Right Claim 249

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, HILDEGARD HICKS (Claimant) AND JAMES HICKS<sup>1</sup> timely submitted a Statement and Proof of Claim (Claim 249) 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 249 was submitted for a total of 660.2 acre-feet of water from the Williamson River and unnamed tributaries, tributary to Upper Klamath Lake, being 38.7 acre-feet for irrigation of 9.0 acres, 621.4 acre-feet for irrigation of 200.5 practicably irrigable acres (including inchoate domestic irrigation of 0.5 acres for lawn and garden), and 0.1 acre-feet for livestock watering of 5 horses. 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 249 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 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.

<sup>1</sup> Mr. James Hicks has since passed away. See RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 6, 1999 (Claim # 249, Page 082).

5. On May 3, 2000, the Claimant timely filed Contest 1730 to the Preliminary Evaluation of Claim 249.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3533: 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.<sup>2</sup>, 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 Pritchard<sup>3</sup>, Don Vincent<sup>4</sup>, 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 52.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3533. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3533 (Apr. 7, 2005).
9. On July 7, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1730 (Settlement Agreement) thereby resolving the remaining contest to Claim 249.
10. On July 8, 2005, the Adjudicator withdrew Case 52 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD and the Claimant 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. Beneficial use of water by the method of natural overflow is established.
4. 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

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<sup>2</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3533 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>3</sup> Berlva Pritchard voluntarily withdrew from Contest 3533 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>4</sup> Don Vincent voluntarily withdrew from Contest 3533 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

FACT of the FINAL ORDER OF DETERMINATION will apply to the irrigation of practicably irrigable acreage from the point of diversion.

5. Based on the file and record herein, IT IS ORDERED that Claim 249 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 249**  
FOR A VESTED AND INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 249, PAGE 77

**CLAIMANT:** HILDEGARD HICKS  
THE ESTATE OF JAMES HICKS  
PO BOX 254  
CHILOQUIN, OR 97624

**VESTED (DEVELOPED) PORTION**

**SOURCE OF WATER:** UNNAMED STREAMS, tributary to the WILLIAMSON RIVER

**PURPOSE OR USE:**  
IRRIGATION OF 9.0 ACRES AND LIVESTOCK WATERING OF 5 HORSES BY NATURAL OVERFLOW

**DATE OF PRIORITY:** OCTOBER 14, 1864

**NO SPECIFIC POINT OF DIVERSION:**  
NATURAL OVERFLOW FROM THE WILLIAMSON RIVER

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

IRRIGATION and LIVESTOCK WATERING BY NATURAL OVERFLOW						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	20	NE NE	1	0.1
35 S	7 E	WM	20	NE NE	8	3.5
35 S	7 E	WM	21	NW NW	6	5.4

**FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:**

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A

CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. RATE FOR IRRIGATION MAY NOT EXCEED 0.22 CFS. RATE FOR LIVESTOCK WATERING MAY NOT EXCEED 50 GALLONS PER DAY. THE SEASON OF USE FOR IRRIGATION MAY NOT EXCEED MARCH 1 TO OCTOBER 16.

**INCHOATE PORTION**

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

**PURPOSE or USE:**

INCHOATE DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (INCHOATE DOMESTIC EXPANDED) FROM POD A; AND

IRRIGATION OF 200.0 PRACTICABLY IRRIGABLE ACRES FROM POD A.

**RATE OF USE:**

3.61 CUBIC FEET PER SECOND (CFS) FROM POD A, MEASURED AT THE POINT OF DIVERSION, AS FOLLOWS:

0.01 CFS FOR INCHOATE DOMESTIC EXPANDED; AND

3.60 CFS FOR IRRIGATION OF PRACTICABLY IRRIGABLE ACREAGE.

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
Inchoate Domestic Expanded	January 1 - December 31
Practicably 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	GLot	Measured Distances
POD A	35 S	7 E	WM	20	SE NE	20	305 FEET NORTH OF E¼ CORNER, SECTION 20

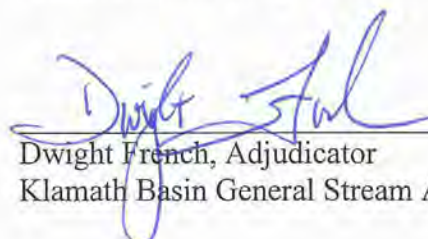
THE PLACE OF USE IS LOCATED AS FOLLOWS:

INCHOATE DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	Authorized POD
35 S	7 E	WM	17	SE SE	32	POD A

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	16	NW SW	25	38.0	POD A
35 S	7 E	WM	16	NW SW	26		
35 S	7 E	WM	16	SW SW	35	38.0	
35 S	7 E	WM	16	SW SW	36		
35 S	7 E	WM	17	NE SE	17	38.0	
35 S	7 E	WM	17	NE SE	24		
35 S	7 E	WM	17	SE SE	25	37.5	
35 S	7 E	WM	17	SE SE	32		
35 S	7 E	WM	20	NE NE	1	15.6	
35 S	7 E	WM	20	NE NE	8		
35 S	7 E	WM	21	NW NW	5	32.9	
35 S	7 E	WM	21	NW NW	6		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication