

**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)	CORRECTED PARTIAL ORDER OF
LEROY JACKSON, SR.)	DETERMINATION
_____)	
)	Water Right Claim 252

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, LEROY JACKSON, SR. (Claimant) timely submitted a Statement and Proof of Claim (Claim 252) 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 252 was submitted for a total of 453.0 acre-feet: 415.0 acre-feet from Spring Creek via a canal, a tributary of the Williamson River, being 412.8 acre-feet for irrigation of 96.0 acres, 0.7 acre-feet for livestock watering of 50 head and 1.5 acre-feet for domestic use including irrigation of 0.5 acres of lawn and garden; and 38.0 acre-feet from the Williamson River, a tributary of Upper Klamath Lake for irrigation of 12.3 practicably irrigable acres. 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 252 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.
5. On May 3, 2000, the Claimant timely filed Contest 1731 to the Preliminary Evaluation of Claim 252.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3535: 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 which were designated as Case 53.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3535. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3535 (Apr. 7, 2005).
9. On June 16, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1731 (Settlement Agreement) thereby resolving the remaining contest to Claim 252.
10. On June 20, 2005, the Adjudicator withdrew Case 53 from the Office of Administrative Hearings.
11. OWRD finds that Spring Creek was claimed as a source of water for irrigation of 95.5 acres of identical lands under Claim 55 (Claimants: Kenneth and Karen Tuttle, dba Double K Ranch) in the Klamath Basin Adjudication within Township 34 South, Range 7 East, W.M., being 0.7 acres in the NE¼ SW¼, 36.6 acres in the NW¼ SW¼, 20.4 acres in the SW¼ SW¼, 8.7 acres in the SE¼ SW¼, all in Section 15; 0.4 acres in the NE¼ SE¼, Section 16; and 14.4 acres in the NE¼ NW¼, 13.1 acres in the NW¼ NW¼, 0.1 acres in the SW¼ NW¼, 1.1 acres in the SE¼ NW¼, all in Section 22. Spring Creek is the stipulated source of water for irrigation of these acres at a rate equivalent to 1/40 of one cubic foot per second per acre.
 - a. On November 16, 2011, OWRD sent identical letters to both sets of claimants at their most current addresses of record, outlining the conflict between the two claims. In the letter, OWRD requested that documentation showing proof of ownership for the lands in question be submitted to OWRD.
 - b. OWRD did not receive returned mail or responses from either of the claimants for Claim 55 or Claim 252.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3535 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3535 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3535 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

- c. On April 27, 2012, OWRD sent a second letter by Certified Mail, again to both sets of claimants at their most current addresses of record. In this letter, OWRD proposed to assign 66.4 acres within Tax Lot 1000 (within Section 15) and 0.4 acres within Tax Lot 500 (within Section 16) to Claim 55, thereby reducing Claim 252 by the same 66.8 acres; and to assign 28.7 acres within Tax Lot 200 (within Section 22) to Claim 252, thereby reducing Claim 55 by the same 28.7 acres. The proposed assignments were made by comparing claim maps to tax lot data using THE OREGON MAP at <http://www.ormap.net/>, and tax lot information from data made available from the Klamath County Assessor. The Department requested a response within 30 days of receipt of the letter, and stated that in the event that a timely response is not received that the overlapping acreage issue would be resolved as proposed in the letter.
 - d. A 'Return Receipt' signed by Ruth E. Jackson was received by OWRD. The 'Return Receipt' for Claimants, Kenneth and Karen Tuttle, dba Double K Ranch was returned to OWRD from the postal service as "Unclaimed." OWRD did not receive responses from either of the claimants for Claim 55 or Claim 252, thus the overlapping acreage issue will be resolved as described in Finding 11.c, above.
12. Claim 55 includes 10.5 inchoate acres within Township 34 South, Range 7 East, W.M., being 1.6 acres in the NW¼ SW¼, 6.7 acres in the SW¼ SW¼, Section 15; and 2.2 acres in the NE¼ SE¼, Section 16. These acreages appear to be within tax lots not currently owned by Claimant Leroy Jackson, Sr. (*see* Finding 11.c, above). Any lands transferred from Indian ownership to non-Indian ownership must be developed with reasonable diligence following the transfer from non-Indian ownership. This principle may need to be applied to these lands claimed as inchoate.⁴
13. Based on OWRD's Investigation Map (T 34 S, R 7 E, W.M.), OWRD finds that the following place of use locations referenced in the Settlement Agreement are within certain Government Lots as listed below:
- a. 0.7 acres within the NE¼ SW¼, Section 15 is within Government Lot 7,
 - b. 8.7 acres within the SE¼ SW¼, Section 15 is within Government Lot 8,
 - c. 14.4 acres within the NE¼ NW¼, Section 22 is within Government Lot 2,
 - d. 13.1 acres within the NW¼ NW¼, Section 22 is within Government Lot 2, and
 - e. 1.1 acres within the SE¼ NW¼, Section 22 is within Government Lot 3.

B. DETERMINATION

- 1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein, with three exceptions:

⁴ Unlike the vested acreage discussed in Finding 11, these inchoate acres do not appear to be double claimed, and thus have been retained within the originating claim.

- a. As described in Finding 11, above, the following acreages are assigned to Claim 55 thereby reducing Claim 252 by 66.8 acres: 0.7 acres in the NE¼ SW¼, 36.6 acres in the NW¼ SW¼, 20.4 acres in the SW¼ SW¼, 8.7 acres in the SE¼ SW¼, all in Section 15; and 0.4 acres in the NE¼ SE¼, Section 16.
 - b. Consistent with Finding 11, above, based on 66.8 acres being assigned to Claim 252, the rate of water from POD 2 is reduced by 1.67 cfs.
 - c. Government Lots are assigned as described in Finding 13, above.
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 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.
 4. Because there is no evidence on the record to the contrary, the standard rate for irrigation will apply, 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.
 5. Based on the file and record herein, IT IS ORDERED that Claim 252 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 252
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 252, PAGE 72; OWRD INVESTIGATION MAP – T 34 S, R 7 E

CLAIMANT: LEROY JACKSON, SR.
PO BOX 777
CHILOQUIN, OR 97624

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED) FROM POD 1
IRRIGATION OF 28.7 ACRES AND LIVESTOCK WATERING OF 50 HEAD FROM POD 2

RATE OF USE:

0.7409 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FOR DOMESTIC EXPANDED FROM POD 1 MEASURED AT THE POINT OF DIVERSION

0.73 CFS FOR IRRIGATION FROM POD 2 MEASURED AT THE POINT OF DIVERSION

0.0009 CFS FOR LIVESTOCK WATERING FROM POD 2 MEASURED AT THE PLACE OF USE, NOT TO EXCEED 600 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
Domestic Expanded	January 1 - December 31
Irrigation	March 1 - October 16
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Remarks
POD 1	Spring Creek	34 S	7 E	WM	9	NW NE	Domestic Expanded Only
POD 2	Spring Creek	34 S	7 E	WM	9	NE NE	Irrigation and Livestock Watering Only

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	7 E	WM	15	SE SW	POD 1

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7 E	WM	22	NE NW	2	14.4	POD 2
34 S	7 E	WM	22	NW NW	2	13.1	
34 S	7 E	WM	22	SW NW		0.1	
34 S	7 E	WM	22	SE NW	3	1.1	

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 12.3 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.22 CFS FROM POD A MEASURED AT THE 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 POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	34 S	7 E	WM	15	SE SW	885 FEET NORTH AND 528 FEET WEST FROM S1/4 CORNER, SECTION 15

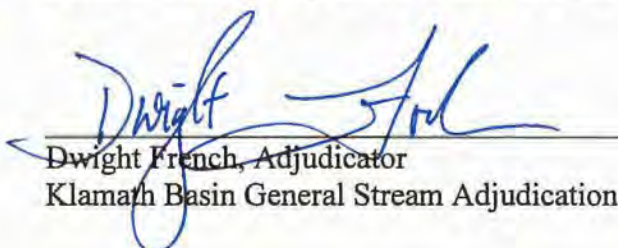
THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7 E	WM	15	NW SW	1.6 ^a	POD A
34 S	7 E	WM	15	SW SW	6.7 ^a	
34 S	7 E	WM	16	NE SE	2.2 ^a	
34 S	7 E	WM	22	NW NW	1.8	

^a Lands which have been transferred to a non-Indian owner will be subject to a standard of development with reasonable diligence following transfer from Indian ownership.

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication