

**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
FRIEDA KIRK	)	DETERMINATION
	)	
_____	)	Water Right Claim 256

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, FRIEDA KIRK (Claimant) timely submitted a Statement and Proof of Claim (Claim 256) 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 an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 256 was submitted for a total of 587.8 acre-feet of water from the Williamson River, a tributary to the Upper Klamath Lake, for irrigation of 189.7 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 256 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.
5. On May 3, 2000, the Claimant timely filed Contest 1733 to the Preliminary Evaluation of Claim 256.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3538: 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>1</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>2</sup>, Don Vincent<sup>3</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 55.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3538. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3538 (Apr. 7, 2005).
9. On June 15, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1733 (Settlement Agreement) thereby resolving the remaining contest to Claim 256.
10. On June 20, 2005, the Adjudicator withdrew Case 55 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. 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 256 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 256**  
FOR AN INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE: CLAIM # 256, PAGE 67**

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3538 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3538 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3538 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

**CLAIMANT:** FRIEDA KIRK  
 11310 EXETER AVE NE  
 SEATTLE WA 98125

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

**PURPOSE or USE:** IRRIGATION OF 189.7 PRACTICABLY IRRIGABLE ACRES FROM POD A.

**RATE OF USE:**

3.41 CUBIC FEET PER SECOND 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	32 S	8 E	WM	7	SE NE	1188 FEET NORTH AND 630 FEET WEST FROM E¼, SECTION 7

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

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
32 S	8 E	WM	7	SW NE	38.0	POD A
32 S	8 E	WM	7	SE NE	25.1	
32 S	8 E	WM	7	NE NW	18.1	
32 S	8 E	WM	7	NW NW	32.5	
32 S	8 E	WM	7	SW NW	38.0	
32 S	8 E	WM	7	SE NW	38.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication