

**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
HAZEL ERICKSON)	DETERMINATION
)	
_____)	Water Right Claim 262

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, HAZEL ERICKSON¹ (Claimant) timely submitted a Statement and Proof of Claim (Claim 262) 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 Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 262 was submitted for a total of 79.6 acre-feet of water from Fort Creek via the Fort Creek Ditch, a tributary of the Wood River, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 77.4 acre-feet for irrigation of 18.0 acres, and 0.7 acre-feet for livestock watering of 50 head. The duty claimed for current irrigation is 4.3 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 262 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 claim is for a source which has been previously adjudicated.”
5. On May 3, 2000, the Claimant timely filed Contest 1739 to the Preliminary Evaluation of Claim 262.

¹ Formerly Hazel Monteith. See RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 1, 1999 (Claim # 262, Page 69).

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3544: 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 67.
8. On May 6, 2003, Claim 262 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
9. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
10. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 9, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
11. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3544. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3544 (Apr. 7, 2005).
12. On August 1, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1739 (Settlement Agreement) thereby resolving the remaining contest to Claim 262.
13. On August 4, 2005, the Adjudicator withdrew Case 67 from the Office of Administrative Hearings.

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3544 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

³ Berlva Pritchard voluntarily withdrew from Contest 3544 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3544 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 rate of water per head is the standard rate for livestock use (12 gallons per head per day measured at the place of use) as outlined in the GENERAL FINDINGS OF FACT OF THE FINAL ORDER OF DETERMINATION. 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, 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.
5. Based on the file and record herein, IT IS ORDERED that Claim 262 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 262
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 262, PAGE 71

CLAIMANT: HAZEL ERICKSON
PO BOX 424
FORT KLAMATH, OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOODRIVER

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED);
IRRIGATION OF 17.5 ACRES; AND
LIVESTOCK WATERING OF 50 HEAD.

RATE OF USE:
0.461 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:
0.01 CFS FOR DOMESTIC EXPANDED MEASURED AT THE POINT OF DIVERSION;
0.45 CFS FOR IRRIGATION OF MEASURED AT THE POINT OF DIVERSION; AND

0.001 CFS FOR LIVESTOCK WATERING 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	Twp	Rng	Mer	Sec	Q-Q	Remarks
Fort Creek	33 S	7.5 E	WM	26	NW NW	Point of Diversion into Canal
Fort Creek Canal Rediversion	34 S	7.5 E	WM	2	SW SW	Point of Rediversion


THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	7.5 E	WM	2	SW SW	Fort Creek Via Fort Creek Canal Rediversion

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	2	SW SW	17.5	Fort Creek Via Fort Creek Canal Rediversion

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication