

**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
JAMES M. AND VALERIE M. ROOT	)	DETERMINATION
	)	
_____	)	Water Right Claim 264

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, GERALD AND LOUISE PAGE timely submitted a Statement and Proof of Claim (Claim 264) 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 under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 264 was submitted for a total of 652.5 acre-feet of water from Agency Spring and Agency Creek, tributaries to Agency Lake, being 622.2 acre-feet for irrigation of 144.7 acres, 27.9 acre-feet for irrigation of 9.7 practicably irrigable acres, and 2.4 acre-feet for livestock watering of 180 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 livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 264 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 264 was ultimately transferred in its entirety to non-Indian successors, JAMES M. AND VALERIE M. ROOT (Claimants). *See (1) BARGAIN SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M95, PAGE 8757 (April 7, 1995) (Claim # 264, Page 063), (2) BARGAIN SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M95, PAGE 16403 (June 22, 1995), (3) SPECIAL WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M02, PAGE 15419 (Mar. 15, 2002), and (4) CHANGE OF OWNERSHIP FORM (Aug. 2, 2004).* A non-Indian successor to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

5. 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.”
6. On May 3, 2000, Gerald and Louise Page, original claimants, timely filed Contest 1740 to the Preliminary Evaluation of Claim 264.
7. On May 5, 2000, James and Valerie Root timely filed Contest 2068 to the Preliminary Evaluation of Claim 264.
8. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3545: 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.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 268.
10. On May 6, 2003, Claim 264 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.
11. 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.
12. 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 11, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3545 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3545 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3545 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. On March 4, 2005, the Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 1740, 2068 AND 3545 (Settlement Agreement) thereby resolving the remaining contests to Claim 264.
14. On March 8, 2005, the Adjudicator withdrew Case 268 from the Office of Administrative Hearings.
15. Beneficial use of water has been made on 9.2 practicably irrigable acres with reasonable diligence.

## **B. DETERMINATION**

1. The Settlement Agreement executed between the Claimants, OWRD, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON 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 264 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 264**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**  
CLAIM # 264, PAGE 23; CLAIM # 264, PAGE 24; and  
OWRD INVESTIGATION MAP – T 34 S, R 7.5 E

**CLAIMANT:** JAMES M. AND VALERIE M. ROOT  
216 MARIPOSA TERRACE  
MEDFORD, OR 97504-9326

**SOURCE OF WATER:**  
AGENCY SPRING, tributary to AGENCY CREEK, and  
AGENCY CREEK, tributary to CROOKED CREEK

**PURPOSE OR USE:**  
IRRIGATION OF 153.9 ACRES; AND  
LIVESTOCK WATERING OF 180 HEAD.

**RATE OF USE:**

3.8433 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

3.84 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION; AND

0.0033 CFS FOR LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, NOT TO EXCEED 2160 GALLONS PER DAY. DIVERSION OF STOCK WATER IS FURTHER LIMITED TO 2.4 ACRE-FEET PER YEAR.

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:**

3.5 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	January 1 - December 31

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

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

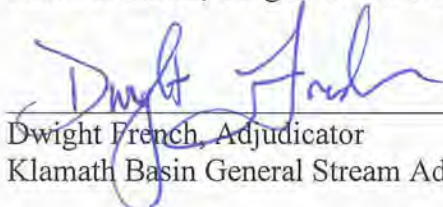
Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Agency Creek and Agency Spring	34 S	7 E	WM	18	SW SW	815 FEET EAST AND 1100 FEET NORTH FROM SW CORNER, SECTION 18

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

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7 E	WM	19	SW SW	4	21.5
34 S	7.5 E	WM	24	SW NE		0.9
34 S	7.5 E	WM	24	SE NE		26.6
34 S	7.5 E	WM	24	NE SE		41.7
34 S	7.5 E	WM	24	NW SE		11.8
34 S	7.5 E	WM	24	SW SE		3.4
34 S	7.5 E	WM	24	SE SE		40.2
34 S	7.5 E	WM	25	NE NE	12	3.7
34 S	7.5 E	WM	25	NE NE	13	2.9
34 S	7.5 E	WM	25	NW NE		1.2

[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