

**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
MARLIN WILSON)	DETERMINATION
)	
_____)	Water Right Claim 277

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, MARLIN WILSON (Claimant) timely submitted a Statement and Proof of Claim (Claim 277) 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 277 was submitted for a total of 368.6 acre-feet of water: 45.9 acre-feet from an unnamed creek, a tributary of the Sprague River, being 45.6 acre-feet for irrigation of 10.6 acres (including domestic irrigation of 0.5 acres for lawn and garden), and 0.3 acre-feet for instream livestock watering of 20 head of cattle and 2 horses; and 322.7 acre-feet from the Sprague River, a tributary of the Williamson River for irrigation of 104.1 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 livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 277 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 instream 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 1751 to the Preliminary Evaluation of Claim 277.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3556: 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 77.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3556. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3556 (Apr. 7, 2005).
9. On August 1, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1751 (Settlement Agreement) thereby resolving the remaining contest to Claim 277.
10. On August 4, 2005, the Adjudicator withdrew Case 77 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 277 is approved as set forth in the following Water Right Claim Description.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3556 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3556 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3556 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

CLAIM NO. 277
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 277, PAGE 70 and OWRD INVESTIGATION MAP – T 36 S, R 11 E

CLAIMANT: MARLIN WILSON
PO BOX 311
SPRAGUE RIVER OR 97639

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: UNNAMED CREEK, tributary to SPRAGUE 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 10.6 ACRES FROM POD 1; AND

INSTREAM LIVESTOCK WATERING OF 20 HEAD OF CATTLE AND 2 HORSES

RATE OF USE:
0.2604 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

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

0.25 CFS FROM POD 1 FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION,
AND

0.0004 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF
USE, NOT TO EXCEED 260 GALLONS PER DAY.

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	GLot	Remarks
POD 1	36 S	11 E	WM	18	SW SW	28	Domestic Expanded and Irrigation
Unnamed Creek	36 S	11 E	WM	18	NE SW		Livestock Watering Only – No specific point of diversion, livestock drink directly from the Unnamed Creek
	36 S	11 E	WM	18	NW SW		
	36 S	11 E	WM	18	SW SW		
	36 S	11 E	WM	18	SE SW		

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	Authorized POD
36 S	11 E	WM	18	NW SW	21	POD 1

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	11 E	WM	18	NE SW	22	0.1	POD 1
36 S	11 E	WM	18	NW SW	21	6.4	
36 S	11 E	WM	18	NW SW	20	1.0	
36 S	11 E	WM	18	SW SW	28	2.5	
36 S	11 E	WM	18	SE SW	27	0.1	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
36 S	11 E	WM	18	NE SW
36 S	11 E	WM	18	NW SW
36 S	11 E	WM	18	SW SW
36 S	11 E	WM	18	SE SW

INCHOATE PORTION

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE: IRRIGATION OF 104.1 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

1.87 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	36 S	11 E	WM	7	SW SW	66 FEET NORTH AND 594 FEET EAST FROM SW CORNER, SECTION 7

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	11 E	WM	18	NE SW	19	10.2	POD A
36 S	11 E	WM	18	NE SW	22		
36 S	11 E	WM	18	NW SW	20	20.4	
36 S	11 E	WM	18	NW SW	21		
36 S	11 E	WM	18	SW SW	28	16.6	
36 S	11 E	WM	18	SW SW	29	19.0	
36 S	11 E	WM	18	SE SW	27	18.9	
36 S	11 E	WM	18	SE SW	30	19.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication