

**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
AMBROSE W. MCAULIFFE, AND)	DETERMINATION
SUSAN J. MCAULIFFE)	
_____)	
)	Water Right Claim 279

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 279 (Claimants: AMBROSE W. MCAULIFFE AND SUSAN J. MCAULIFFE) and its associated contests (3558, 3815, and 4209) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 248.
2. On May 6, 2003, Claim 279 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.
3. 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.
4. 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 3, above). See ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 279 on February 20, 2007. No exceptions were filed to the Proposed Order.
6. On July 21, 2011, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to address an enlargement of the original claim that was recommended in the 2007 Proposed Order. The Amended Proposed Order replaces the Proposed Order in its entirety.

7. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by (1) the United States of America, and (2) Ambrose and Susan McAuliffe. Responses to exceptions were timely filed by (1) the United States of America, and (2) Ambrose and Susan McAuliffe.
8. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 279, and are found to be unpersuasive.¹ Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.
9. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
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. Based on the file and record herein, IT IS ORDERED that Claim 279 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 279

CLAIM MAP REFERENCE:

CLAIM # 279, PAGE 66; OWRD INVESTIGATION MAP – T 33 S, R 7.5 E

CLAIMANT: AMBROSE W. MCAULIFFE
SUSAN J. MCAULIFFE
PO BOX 456
KLAMATH FALLS OR 97626

SOURCE OF WATER:

CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:

IRRIGATION OF 31.4 ACRES; LIVESTOCK WATERING OF 20 HEAD

RATE OF USE:

0.7804 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.78 CFS FROM CROOKED CREEK POD FOR IRRIGATION OF 31.4 ACRES, MEASURED AT THE POINT OF DIVERSION; AND

¹ The United States' exceptions were limited to a reservation of rights based on a stipulation entered into between the United States and the Claimants on November 29, 2010. The United States' reservation is not presently at issue and is not discussed further herein.

0.0004 CFS FROM CROOKED CREEK INCLUDING ITS DITCHES FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 240 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, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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 FOR 5.2 ACRES IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

3.5 ACRE-FEET PER ACRE FOR 26.2 ACRES IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

0.3 ACRE-FEET PER YEAR FOR LIVESTOCK WATERING

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 – October 16
Livestock Watering from Crooked Creek	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:


POD Name	Twp	Rng	Mer	Sec	Q-Q
Crooked Creek POD	33 S	7.5 E	WM	26	SW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING FROM CROOKED CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	35	NW NE	22.3
33 S	7.5 E	WM	35	NE NW	9.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication