

**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
AARON SMITH / ESTATE OF LAVINA)	DETERMINATION
LALO SMITH)	
)	
_____)	Water Right Claim 281

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, AARON SMITH / ESTATE OF LAVINA LALO SMITH¹ (Claimant) timely submitted a Statement and Proof of Claim (Claim 281) 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 281 was submitted for a total of 161.4 acre-feet of water from Copperfield Creek, a tributary of the Sprague River, being 161.1 acre-feet for irrigation of 52.0 practicably irrigable acres, and 0.3 acre-feet for instream livestock watering of 20 head. 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 281 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 was approved, and the

¹ The claim was originally submitted by counsel in the names of Edward Lalo Case and Cassie Lolo Case, and was corrected to Aaron Smith/Estate of Lavina Lolo Smith in subsequent submittals by counsel. See STATEMENT AND PROOF OF CLAIM, Sept. 3, 1991 (Claim # 281, Page 120) and RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct 1, 1999 (Claim # 281, Page 143). On January 30, 1986, the land appurtenant to Claim 281 was deeded to Lavina Lalo Smith, DEED, COUNTY OF KLAMATH, VOL. M-86, PAGE 1690 (Claim # 281, Page 032).

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 1753 to the Preliminary Evaluation of Claim 281.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3560: 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 80.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3560. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3560 (Apr. 7, 2005).
9. On August 1, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1753 (Settlement Agreement) thereby resolving the remaining contest to Claim 281.
10. On August 4, 2005, the Adjudicator withdrew Case 80 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.

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3560 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

³ Berlva Pritchard voluntarily withdrew from Contest 3560 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3560 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 281 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 281
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 281, PAGE 149

CLAIMANT: AARON SMITH / ESTATE OF LAVINA LALO SMITH
206 GAGE RD
KLAMATH FALLS, OR 97601

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: COPPERFIELD CREEK, tributary to the SPRAGUE RIVER

PURPOSE OR USE: INSTREAM LIVESTOCK WATERING OF 20 HEAD.

RATE OF USE:

0.0004 CUBIC FOOT PER SECOND (CFS) FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 240 GALLONS PER DAY.

PERIOD OF ALLOWED USE:

Use	Period
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
34 S	8 E	WM	34	NE SW	No specific point of diversion, livestock drink directly from Copperfield Creek
34 S	8 E	WM	34	NW SW	
34 S	8 E	WM	34	SW SW	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
34 S	8 E	WM	34	NE SW
34 S	8 E	WM	34	NW SW
34 S	8 E	WM	34	SW SW

INCHOATE PORTION

SOURCE OF WATER: COPPERFIELD CREEK, tributary to the SPRAGUE RIVER

PURPOSE or USE: IRRIGATION OF 52.0 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.94 CUBIC FOOT 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 1	34 S	8 E	WM	34	SW SW	1254 FEET NORTH AND 1056 FEET EAST FROM SW CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	34	NE SW	13.9	POD A
34 S	8 E	WM	34	SW SW	18.7	
35 S	8 E	WM	34	NW SW	19.4	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication