

**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
ROYCE LIVING TRUST)	DETERMINATION
)	
_____)	Water Right Claim 267

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 November 13, 1990, JESSIE P. ROYSE AND R. RAYMOND ROYSE timely submitted a Statement and Proof of Claim to the Oregon Water Resources Department (OWRD) for irrigation (vested claim), and a second Statement and Proof of Claim to the Oregon Water Resources Department (OWRD) for practicably irrigable acres (inchoate claim). Both claims were submitted pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation (Allottee claim), under the Treaty of October 14, 1864, 16 Stat. 707. The vested and inchoate claims were combined and designated by OWRD as Claim 267.
2. JESSIE P. ROYSE AND R. RAYMOND ROYSE signed the two Statements and Proofs of Claim for Claim 267 attesting that the information contained in the claims is true.
3. The claim was subsequently assigned to ROYSE LIVING TRUST (Claimant). *See ASSIGNMENT, Claim # 267, Page 053, Mar. 10, 1994*
4. Claim 267 was submitted for a total of 231.9 acre-feet of water from Irving Creek, a tributary of the Williamson River, being 147.9 acre-feet for irrigation of 34.4 acres, 82.8 acre-feet for irrigation of 26.7 practicably irrigable acres, and 1.2 acre-feet for instream livestock watering of 25 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.

5. Subsequently, counsel signed Claim 267 attesting that the information contained in the claim is true.
6. 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 was approved for instream livestock watering and irrigation, with a longer season of irrigation than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.
7. On May 3, 2000, the Claimant timely filed Contest 1743 to the Preliminary Evaluation of Claim 267.
8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3548: 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.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 70.
10. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3548. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3548 (Apr. 7, 2005).
11. On August 1, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1743 (Settlement Agreement) thereby resolving the remaining contest to Claim 267.
12. On August 4, 2005, the Adjudicator withdrew Case 70 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3548 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3548 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3548 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the ROYSE LIVING TRUST 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 267 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 267
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 123

CLAIMANT: ROYCE LIVING TRUST
539 GIRARD CIRCLE
MEDFORD, OR 97504

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: IRVING CREEK, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 34.4 ACRES FROM IRVING CREEK POD; AND
INSTREAM LIVESTOCK WATERING OF 25 HEAD.

RATE OF USE:
0.8505 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.85 CFS FROM IRVING CREEK POD FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION; AND

0.0005 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 300 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
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
Irving Creek POD	30 S	11 E	WM	19	SE SW	Irrigation Only
Irving Creek	30 S	11 E	WM	19	NW SW	Livestock Watering Only; No specific point of diversion – livestock drink directly from Irving Creek
	30 S	11 E	WM	19	SW SW	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
30 S	11 E	WM	19	NW SW	3	31.2	Irving Creek POD
30 S	11 E	WM	19	SW SW	4	3.2	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
30 S	11 E	WM	19	NW SW
30 S	11 E	WM	19	SW SW

INCHOATE PORTION

SOURCE OF WATER: IRVING CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

IRRIGATION OF 26.7 PRACTICABLY IRRIGABLE ACRES, BEING 5.5 ACRES FROM POD A AND 21.2 ACRES FROM POD B.

RATE OF USE:

0.48 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.1 CFS FROM POD A, AND 0.38 CFS FROM POD B.

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 POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

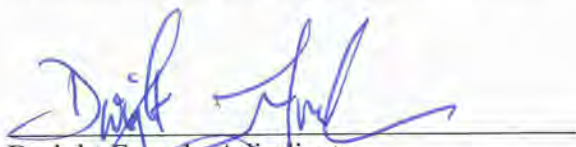
POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	30 S	11 E	WM	19	SE SW	1254 FEET NORTH AND 1320 FEET EAST FROM SW 1/4 CORNER, SECTION 19
POD B	30 S	11 E	WM	19	SE SE	924 FEET NORTH AND 528 FEET WEST FROM SE1/4 CORNER, SECTION 19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
30 S	11 E	WM	19	NW SW	3	5.5	POD A
30 S	11 E	WM	19	NW SW	3	2.8	POD B
30 S	11 E	WM	19	SW SW	4	18.4	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication