

**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
DELL SMITH, JR., VELDA SMITH,	)	DETERMINATION
AND LORRAINE JOSEPHINE SMITH	)	
MEADOWS GARRISON	)	
_____	)	Water Right Claim 271

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, DELL SMITH, JR., VELDA SMITH, AND LORRAINE SMITH timely submitted a Statement and Proof of Claim (Claim 271) 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 (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 271 was submitted for a total of 648.5 acre-feet of water: 482.1 acre-feet from Whiskey Creek and tributary springs, tributary to the Sprague River, being 479.4 acre-feet for irrigation of 111.5 acres, 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, and 1.2 acre-feet for instream livestock watering of 80 head of cattle and 6 horses; and 166.4 acre-feet from the Sprague River, a tributary of the Williamson River, for irrigation of 53.7 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 domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 271 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 Claimants timely filed Contest 1745 to the Preliminary Evaluation of Claim 271.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3552: 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 72.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3552. *See* NOTICE OF WITHDRAWAL OF CONTEST No. 3552 (Apr. 7, 2005).
9. On August 1, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1745 (Settlement Agreement) thereby resolving the remaining contest to Claim 271.
10. On August 4, 2005, the Adjudicator withdrew Case 72 from the Office of Administrative Hearings.
11. On December 12, 2011, a portion of the property appurtenant to Claim 271 was transferred entirely to LORRAINE JOSEPHINE SMITH MEADOWS GARRISON from LORRAINE JOSEPHINE SMITH. (*See* WARRANTY DEED, dated December 12, 2011 and CHANGE OF OWNERSHIP FORM FOR PROPERTY CLAIMED IN THE KLAMATH BASIN RIVER BASIN ADJUDICATION (Feb. 16, 2012). DELL SMITH, JR. and VELDA SMITH, and LORRAINE JOSEPHINE SMITH MEADOWS GARRISON are Co-claimants in Claim 271.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3552 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3552 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3552 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

[Beginning of Water Right Claim Description]

**CLAIM NO. 271**  
FOR A VESTED AND INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE:**  
CLAIM # 271, PAGE 93 and OWRD INVESTIGATION MAP – T 36 S, R 12 E

**CLAIMANT:** DELL SMITH, JR.  
VELDA SMITH  
PO BOX 103  
BEATTY, OR 97621

LORRAINE JOSEPHINE SMITH MEADOWS GARRISON  
1214 DIVISION STREET #13  
OREGON CITY, OR 97045

**VESTED (DEVELOPED) PORTION**

**SOURCE OF WATER:** WHISKEY CREEK, tributary to the SPRAGUE RIVER

**PURPOSE OR USE:**  
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED) FROM WHISKEY CREEK POD;  
IRRIGATION OF 111.0 ACRES FROM WHISKEY CREEK POD; AND  
INSTREAM LIVESTOCK WATERING OF 80 HEAD OF CATTLE AND 6 HORSES.

**RATE OF USE:**  
2.7616 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:  
0.01 CFS FROM WHISKEY CREEK POD FOR DOMESTIC EXPANDED, MEASURED AT THE POINT OF DIVERSION;  
2.75 CFS FROM WHISKEY CREEK POD FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION; AND  
0.0016 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1020 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	Remarks
Whiskey Creek POD	36 S	12 E	WM	19	SE SW	Domestic Expanded and Irrigation Only
Whiskey Creek	36 S	12 E	WM	18	SW SW	Livestock Watering Only– No specific point of diversion for livestock watering, livestock drink directly from Whiskey Creek
	36 S	12 E	WM	18	SE SW	
	36 S	12 E	WM	19	NE NW	
	36 S	12 E	WM	19	NW NW	
	36 S	12 E	WM	19	SE NW	
	36 S	12 E	WM	19	NE SW	
	36 S	12 E	WM	19	SE SW	

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

DOMESTIC EXPANDED					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
36 S	12 E	WM	19	SE NW	Whiskey Creek POD

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	18	SW SW	29	12.5	Whiskey Creek POD
36 S	12 E	WM	18	SE SW	30	0.1	
36 S	12 E	WM	19	NE NW		22.3	
36 S	12 E	WM	19	NW NW	5	11.6	
36 S	12 E	WM	19	NW NW	6	0.8	
36 S	12 E	WM	19	SE NW		15.7	
36 S	12 E	WM	19	NE SW		26.6	
36 S	12 E	WM	19	SE SW		21.4	

INSTREAM LIVESTOCK WATERING FROM WHISKEY CREEK				
Twp	Rng	Mer	Sec	Q-Q
36 S	12 E	WM	18	SW SW
36 S	12 E	WM	18	SE SW
36 S	12 E	WM	19	NE NW
36 S	12 E	WM	19	NW NW
36 S	12 E	WM	19	SE NW
36 S	12 E	WM	19	NE SW
36 S	12 E	WM	19	SE SW

**INCHOATE PORTION**

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

**PURPOSE or USE:** IRRIGATION OF 53.7 PRACTICABLY IRRIGABLE ACRES FROM POD A.

**RATE OF USE:**

0.97 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	GLot
POD A	36 S	12 E	WM	17	SE NE	16

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

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
36 S	12 E	WM	17	SW SE	0.9	POD A
36 S	12 E	WM	17	SE SE	11.4	
36 S	12 E	WM	20	NE NE	29.9	
36 S	12 E	WM	20	NW NE	4.1	
36 S	12 E	WM	20	SE NE	7.4	

[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