

**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
ANNABELLE BATES,	)	DETERMINATION
ALBERT SUMMERS, SR., AND	)	
KEENYN REED	)	Water Right Claim 272
_____	)	

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, ANGELINE SUMMERS timely submitted a Statement and Proof of Claim (Claim 272) 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 272 was submitted for a total of 1899.7 acre-feet of water from Dockney Flat Creek and the Sprague River, tributary to the Williamson River, being 1018.2 acre-feet for irrigation of 236.8 acres, 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 876.7 acre-feet for irrigation of 283.1 practicably irrigable acres, and 3.3 acre-feet for livestock watering of 246 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 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 272 attesting that the information contained in the claim is true.
4. The claim was subsequently transferred to ANNABELLE BATES, ALBERT SUMMERS, SR., AND KEENYN REED (Claimants). *See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 12, 1999 (Claim # 272, Page 116).
5. 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 livestock watering and irrigation was approved, but with a longer irrigation season than claimed; the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

6. On May 3, 2000, the Claimants timely filed Contest 1746 to the Preliminary Evaluation of Claim 272.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3553: 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.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 73.
9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3553. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3553 (Apr. 7, 2005).
10. On August 1, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1746 (Settlement Agreement) thereby resolving the remaining contest to Claim 272.
11. On August 4, 2005, the Adjudicator withdrew Case 73 from the Office of Administrative Hearings.
12. OWRD finds that the total practically irrigable acreage of 282.3 acres listed in the Settlement Agreement is incorrect; the correct total of practicable irrigable acreage is 282.6 acres.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein, with the exception of a scrivener's error in the total practically irrigable acreage as described in Finding 12, above; the total practically irrigable acreage is corrected to 282.6 acres.
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.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3553 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3553 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3553 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Beneficial use water by the method of natural overflow is established.
4. 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 to the irrigation of practicably irrigable acreage from the points of diversion.
5. Based on the file and record herein, IT IS ORDERED that Claim 272 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 272**  
FOR A VESTED AND INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 272, PAGES 105 and 106

**CLAIMANTS:** ANNABELLE BATES  
ALBERT SUMMERS, SR.  
KEENYN REED  
PO BOX 363  
CHILOQUIN OR 97624

**VESTED (DEVELOPED) PORTION**

**SOURCE OF WATER:**

DOCKNEY FLAT CREEK, tributary to the SPRAGUE RIVER; and  
The SPRAGUE RIVER, tributary to the WILLIAMSON 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 236.8 ACRES FROM THE NATURAL OVERFLOW OF DOCKNEY FLAT CREEK; AND

LIVESTOCK WATERING OF 246 HEAD AT A RATE 12 GALLONS PER DAY PER HEAD, BEING 8 HEAD FROM THE SPRAGUE RIVER AND 238 HEAD FROM THE NATURAL OVERFLOW OF DOCKNEY FLAT CREEK.

**RATE OF USE OF WATER FOR DOMESTIC USE, AND INSTREAM LIVESTOCK WATERING FROM THE SPRAGUE RIVER**

0.0101 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0001 CFS FOR LIVESTOCK WATERING FROM POD 2 MEASURED AT THE PLACE OF USE, NOT TO EXCEED 98 GALLONS PER DAY (GPD)

**PERIOD OF ALLOWED USE FOR DOMESTIC USE, AND INSTREAM LIVESTOCK WATERING FROM THE SPRAGUE RIVER**

Use	Period
Domestic Expanded	January 1 - December 31
Livestock	January 1 - December 31

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

Pod Name	Source	Twp	Rng	Mer	Sec	Q-Q	Remarks
POD 1	Dockney Flat Creek	35 S	9 E	WM	8	NE NW	Domestic Expanded Only
POD 2	The Sprague River	35 S	9 E	WM	8	NE NW	Livestock Watering Only
Natural Overflow	Dockney Flat Creek	35 S	8 E	WM			Irrigation and Livestock Watering Only; No specific point of diversion - irrigation and livestock watering by natural overflow
		35 S	9 E	WM			

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

<b>DOMESTIC EXPANDED FROM DOCKNEY FLAT CREEK</b>					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
35 S	9 E	WM	8	NW NW	POD 1

<b>LIVESTOCK WATERING FROM THE SPRAGUE RIVER</b>					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
35 S	9 E	WM	8	NW NW	POD 2

<b>IRRIGATION and LIVESTOCK WATERING BY NATURAL OVERFLOW FROM DOCKNEY FLAT CREEK</b>						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	8 E	WM	13	NE SE		15.5
35 S	8 E	WM	13	SW SE		0.5
35 S	8 E	WM	13	SE SE		35.8
35 S	9 E	WM	7	NE SE		8.9
35 S	9 E	WM	7	NW SE		1.6
35 S	9 E	WM	7	SW SE		27.0
35 S	9 E	WM	7	SE SE		5.6
35 S	9 E	WM	8	SW NW		10.5
35 S	9 E	WM	8	NW SW		7.9
35 S	9 E	WM	18	NW NE		18.9
35 S	9 E	WM	18	SW NE		3.7
35 S	9 E	WM	18	NE NW		12.2
35 S	9 E	WM	18	SW NW	2	14.3
35 S	9 E	WM	18	SE NW		22.2
35 S	9 E	WM	18	NE SW		4.7
35 S	9 E	WM	18	NW SW	3	34.6
35 S	9 E	WM	18	SW SW	4	12.9

**FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:**

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. RATE FOR IRRIGATION MAY NOT EXCEED 5.85 CFS. RATE FOR LIVESTOCK WATERING MAY NOT EXCEED 2854 GALLONS PER DAY. THE SEASON OF USE FOR IRRIGATION MAY NOT EXCEED MARCH 1 TO OCTOBER 16.

**INCHOATE PORTION**

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

**PURPOSE or USE:**

IRRIGATION OF 282.6 PRACTICABLY IRRIGABLE ACRES FROM POD A AND POD B.

**RATE OF USE:**

5.08 CFS FROM POD A AND POD B, 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:** MARCH 1 - OCTOBER 16

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

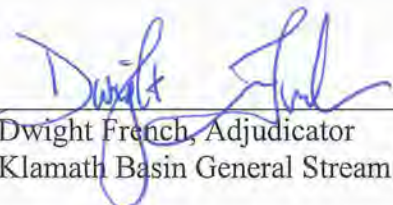
POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	35 S	9 E	WM	18	NW NE	132 FEET SOUTH AND 132 FEET EAST FROM N1/4 CORNER, SECTION 18
POD B	35 S	9 E	WM	18	NE NW	726 FEET SOUTH AND 462 FEET WEST FROM N1/4 CORNER, SECTION 18

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

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	8 E	WM	13	NE SE	4.5	POD A AND POD B
35 S	8 E	WM	13	SW SE	1.2	
35 S	8 E	WM	13	SE SE	2.8	
35 S	9 E	WM	7	SE NE	17.7	
35 S	9 E	WM	7	NE SW	14.1	
35 S	9 E	WM	7	SE SW	22.5	
35 S	9 E	WM	7	NE SE	18.4	
35 S	9 E	WM	7	NW SE	26.2	
35 S	9 E	WM	7	SW SE	12.4	
35 S	9 E	WM	7	SE SE	20.0	
35 S	9 E	WM	8	NE NW	2.6	
35 S	9 E	WM	8	NW NW	12.4	
35 S	9 E	WM	8	SW NW	20.3	
35 S	9 E	WM	8	NW SW	19.6	
35 S	9 E	WM	8	SW SW	1.2	
35 S	9 E	WM	18	NE NE	1.1	
35 S	9 E	WM	18	NW NE	17.7	
35 S	9 E	WM	18	SW NE	8.1	
35 S	9 E	WM	18	NE NW	25.0	
35 S	9 E	WM	18	NW NW	2.1	
35 S	9 E	WM	18	SW NW	9.2	
35 S	9 E	WM	18	SE NW	16.2	
35 S	9 E	WM	18	NE SW	6.7	
35 S	9 E	WM	18	NW SW	0.6	

[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