# 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
ELWOOD MILLER	)	DETERMINATION
	)	Water Right Claim 275

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, RAYMOND L. UNIVE timely submitted a Statement and Proof of Claim (Claim 275) 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 275 was submitted for a total of 21.71 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 5.2 acre-feet for irrigation of 1.2 acres, 16.5 acre-feet for irrigation of 5.3 practicably irrigable acres, and 0.01 acre-feet for instream livestock watering of 1 horse. 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.
- 3. Counsel signed Claim 275 attesting that the information contained in the claim is true.
- 4. The claim was subsequently transferred to ELWOOD MILLER (Claimant). See RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Jan. 3, 2000 (Claim # 275, Page 92).
- 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; and the inchoate portion of the claim was denied. The claim had been evaluated as a Walton claim (transfer from Indian ownership to non-Indian ownership), as it only took into consideration information available as of September 5, 1999.

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- 6. On Oct. 29, 1999, ELWOOD MILLER submitted documentation certifying his enrollment as a member of the Klamath Tribe (Claim # 275, page 84).
- 7. On May 3, 2000, the Claimant timely filed Contest 1749 to the Preliminary Evaluation of Claim 275.
- 8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 42.
- 9. On July 1, 2003, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1749 (Settlement Agreement) thereby resolving the only contest to Claim 275.
- 10. On July 3, 2003, the Adjudicator withdrew Case 42 from the Office of Administrative Hearings.
- 11. OWRD finds that duty for irrigation is 4.3 acre-feet per acre and the duty for practicably irrigable acres is 3.1 acre-feet per acre, as claimed.
- 12. OWRD finds that the irrigation season, March 1 to October 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed an irrigation season March 1 through October 16.

# **B. DETERMINATION**

- 1. The Settlement Agreement executed between OWRD and ELWOOD MILLER is adopted and incorporated as if set forth fully herein, with the exception of the irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 12, above); the irrigation season recognized herein is consistent the Claimant's original claim.
- 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. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
- 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.
- 5. Based on the file and record herein, IT IS ORDERED that Claim 275 is approved as set forth in the following Water Right Claim Description.

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# CLAIM NO. 275 FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 275, PAGE 77

CLAIMANT: ELWOOD MILLER PO BOX 274 CHILOQUIN, OR 97624

## **VESTED (DEVELOPED) PORTION**

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

#### **PURPOSE OR USE:**

IRRIGATION OF 1.2 ACRES FROM POD 1 AND INSTREAM LIVESTOCK WATERING OF ONE HORSE.

## **RATE OF USE:**

0.03 CUBIC FOOT PER SECOND (CFS) FROM POD 1 FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION; AND

10 GALLONS PER DAY FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE.

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
POD 1	34 S	7 E	WM	27	SE SE	For Irrigation Only
Williamson River	34 S	7 E	WM	27	SE SE	For Livestock Watering Only - No specific point of diversion, livestock drink directly from the Williamson River

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

IRRIGATION								
Тwp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD		
34 S	7 E	WM	27	SE SE	1.2	POD 1		

INSTRI	EAM LIVI	ESTOCK	WAT	ERING
Twp	Rng	Mer	Sec	Q-Q
34 S	7 E	WM	27	SE SE

## INCHOATE PORTION

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE or USE: IRRIGATION OF 5.3 PRACTICABLY IRRIGABLE ACRES FROM POD A.

#### **RATE OF USE:**

0.09 CFS 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 A	34 S	7 E	WM	27	SE SE	924 FEET NORTH AND 1122 FEET WEST FROM SE¼ CORNER, SECTION 27

## THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE								
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD		
34 S	7 E	WM	27	SE SE	5.6	POD A		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator Klamath Basin General Stream Adjudication

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