

**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 )  
PHYLLIS MAE WALKER )  
 )  
\_\_\_\_\_ )                      PARTIAL ORDER OF  
 )                      DETERMINATION  
 )  
 )                      Water Right Claim 276

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, DALE WALKER timely submitted a Statement and Proof of Claim (Claim 276) 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 276 was submitted for a total of 483.0 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 303.2 acre-feet for irrigation of 70.5 acres, 179.4 acre-feet for irrigation of 57.9 practicably irrigable acres (including inchoate domestic irrigation of 0.5 acres for lawn and garden), and 0.4 acre-feet for livestock watering of 26 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.
3. Counsel signed Claim 276 attesting that the information contained in the claim is true.
4. On August 9, 1991, the title to the property appurtenant to Claim 276 was transferred to PHYLLIS MAE WALKER (Claimant) from IVAN DALE WALKER. *See* reference to COUNTY OF KLAMATH RECORDS, VOL. M91, PAGE 15907 in the CHAIN OF TITLE REPORT (Claim # 276, page 034).
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 because the elements for a practicably irrigable acreage right were not established.

6. On May 3, 2000, the Claimant timely filed Contest 1750 to the Preliminary Evaluation of Claim 276.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3555: 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 76.
9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3555. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3555 (Apr. 7, 2005).
10. On November 14, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contest to Claim 276.
11. On November 21, 2005, the Adjudicator withdrew Case 76 from the Office of Administrative Hearings.
12. OWRD finds portion of the claim stipulated in the Settlement Agreement for 0.01 cubic foot per second for “Domestic Use for One Family” including irrigation of 0.5 acres of lawn and garden is an inchoate use rather than a vested use. This is consistent with the statement made in the claim: “The area surrounding the residence on the property requires irrigation of 0.5 acre. This results in a domestic water claim of 1.5 acre-feet annually. This water requirement is included in the area delineated as practicably irrigable acreage.” *See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 12, 1999 (Claim # 276, Page 74).

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3555 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3555 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3555 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

## B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein, with the exception that the vested use of 0.01 cubic foot per second for “Domestic Use for One Family,” including irrigation of 0.5 acres of lawn and garden is approved as an inchoate use.
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 of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
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 276 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 276**

FOR A VESTED AND INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 276, PAGE 84 and OWRD INVESTIGATION MAP – T 35 S, R 7 E;

**CLAIMANT: PHYLLIS MAE WALKER**

PO BOX 247

CHILOQUIN OR 97624

### VESTED (DEVELOPED) PORTION

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

**PURPOSE OR USE:**

IRRIGATION OF 70.5 ACRES AND LIVESTOCK WATERING OF 26 HEAD FROM POD 1.

**RATE OF USE:**

1.7605 CUBIC FEET PER SECOND (CFS) FROM POD 1 AS FOLLOWS:

1.76 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION; AND

0.0005 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 312 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER.

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 POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	35 S	7 E	WM	9	SE SE	25

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

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	9	SE NE	9	2.1	POD 1
35 S	7 E	WM	9	SE NE	16	3.4	
35 S	7 E	WM	9	NE SE	17	4.7	
35 S	7 E	WM	9	NE SE	24	9.9	
35 S	7 E	WM	9	SE SE	25	16.2	
35 S	7 E	WM	9	SE SE	32	11.6	
35 S	7 E	WM	9	SE SE		3.3	
35 S	7 E	WM	10	SW NW	3	3.5	
35 S	7 E	WM	10	SW NW		2.4	
35 S	7 E	WM	10	SW NW	4	3.5	
35 S	7 E	WM	10	NW SW	5	4.0	
35 S	7 E	WM	10	NW SW	6	2.1	
35 S	7 E	WM	10	NW SW		3.3	
35 S	7 E	WM	10	SW SW		0.4	
35 S	7 E	WM	10	SE SE	7	0.1	

**INCHOATE PORTION**

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

**PURPOSE or USE:**

INCHOATE DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (INCHOATE DOMESTIC EXPANDED) FROM POD A; AND

IRRIGATION OF 57.4 PRACTICABLY IRRIGABLE ACRES FROM POD A.

**RATE OF USE:**

1.04 CUBIC FEET PER SECOND FROM POD A, MEASURED AT THE POINT OF DIVERSION, AS FOLLOWS:

0.01 CFS FOR INCHOATE DOMESTIC EXPANDED; AND

1.03 CFS FOR IRRIGATION OF PRACTICABLY IRRIGABLE ACREAGE.

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
Inchoate Domestic Expanded	January 1 - December 31
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	Measured Distances
POD A	35 S	7 E	WM	10	SW NW	13	462 FEET EAST FROM W¼ CORNER, SECTION 10

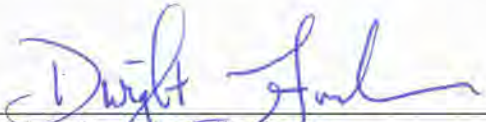
**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

INCHOATE DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	Authorized POD
35 S	7 E	WM	9	SE SE	32	POD A

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	9	SE NE	9	17.0	POD A
35 S	7 E	WM	9	SE NE	16	15.8	
35 S	7 E	WM	9	NE SE	17	14.5	
35 S	7 E	WM	9	NE SE	24	9.6	
35 S	7 E	WM	9	SE SE	25	0.5	

[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