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 CONRAD CAILLOUTEE AND TAMARA CAILLOUTTE; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 150

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 150 (Co-Claimants: CONRAD CAILLOUTEE AND TAMARA CAILLOUTTE; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3144) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 150 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 150, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 150 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 150

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: CONRAD CAILLOUETTE
TAMARA CAILLOUETTE
234 RIVERSIDE DR.
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.4 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	NE SW	12	0.4	7900 (234 Riverside Drive)	Southern Portion of Lot 6 and Lot 7 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 WILFORD A. DUNSTER; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 151

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 151 (Co-Claimants: WILFORD A. DUNSTER; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3145) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 151 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 151, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 151 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 151

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: WILFORD A. DUNSTER
346 RIVERSIDE DR.
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SE SW	11	0.1	600 (346 Riverside Drive)	Eastern Portion Lot 11 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 DAVID C. AND ELOISE J. ELLIOT; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 152

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 152 (Co-Claimants: DAVID C. AND ELOISE J. ELLIOT; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3146) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 152 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 152, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 152, 152, 153, 155, 156, 157, 158, 152, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 152 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 152

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: DAVID C. AND ELOISE J. ELLIOT
200 MACKLYN COVE DRIVE, APT 11
BROOKINGS, OR 97415

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.1	2400	616 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 MICHAEL J. REYNOLDS AND PAMELA A. TRAINA; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 153

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 153 (Co-Claimants: MICHAEL J. REYNOLDS AND PAMELA A. TRAINA; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (16 AND 3417) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 153 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 153, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 153, 152, 153, 155, 156, 157, 158, 153, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 153 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 153

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: MICHAEL J. REYNOLDS
PAMELA A. TRAINA
702 CONGER AVE
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.3 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.3	1800	702 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 ALICE M. GALLOWAY; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 154

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 154 (Co-Claimants: ALICE M. GALLOWAY; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3148) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 154 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 154, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 154 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 154

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: ALICE M. GALLOWAY
219 ROOSEVELT ST
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lots	Remarks
38 S	9 E	WM	32	SE SW	11	0.1	300 (324 Riverside Drive) 400 (324 Riverside Drive)	Lot 10 in Block 4 of West Klamath Falls Addition

End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 MASSOUD (MIKE) AND BEVERLY GHIASSI; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 155

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 155 (Co-Claimants: MASSOUD (MIKE) AND BEVERLY GHIASSI; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3149) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 155 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 155, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 155, 152, 153, 155, 156, 157, 158, 155, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 155 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 155

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: MASSOUD (MIKE) AND BEVERLY GHIASSI
3390 KALLIN AVE
LONG BEACH, CA 70808

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.4 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.4	2100	636 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JAMES DILLON AND DEBRA DILLON; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 156

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 156 (Co-Claimants: JAMES DILLON AND DEBRA DILLON; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3150) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 156 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 156, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 156 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 156

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: JAMES DILLON
DEBRA DILLON
406 RIVERSIDE DR.
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SE SW	11	0.1	700 (406 Riverside Drive)	Eastern Portion Lot 12 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH CRISIS CENTER; DARYL KOLLMANAND MARTA (KOLLMAN) CARPENTER; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 157

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 157 (Co-Claimants: KLAMATH CRISIS CENTER; DARYL KOLLMAN AND MARTA (KOLLMAN) CARPENTER; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3151) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 157 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 157, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 157 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 157

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: KLAMATH CRISIS CENTER
PO BOX 1358
KLAMATH FALLS, OR 97601

DARYL KOLLMAN
PO BOX 609
1360 S 6TH ST
KLAMATH FALLS, OR 97601

MARTA (KOLLMAN) CARPENTER
PO BOX 1810
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.7 ACRES

RATE OF USE:
0.02 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lots	Remarks
38 S	9 E	WM	32	NE SW	12	0.7	7600 (142 Riverside Drive)	Southern Portion Lot 3 and Lot 4 in Block 4 of West Klamath Falls Addition

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lots	Remarks
38 S	9 E	WM	32	SE SW	11		1300 (500 Riverside Drive) 1400 (532 Riverside Drive)	Lot 17 and Lot 18 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 STEVEN L. HESS; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 158

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 158 (Co-Claimants: STEVEN L. HESS; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3152) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 158 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 158, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 158 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 158

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: STEVEN L. HESS
446 RIVERSIDE DR.
KLAMATH FALLS OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SE SW	11	0.1	1100 (446 Riverside Drive)	Southern Portion Lot 16 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JESS HOUSE; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 159

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT

1. Claim 159 (Co-Claimants: JESS HOUSE; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3153) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 159 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 159, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 159, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 159 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 159

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: JESS HOUSE
706 CONGER AVE
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.4 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.4	1700	706 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JELD-WEN, INC.	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 160

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 February 1, 1991, JELD-WEN, INC. (Claimant) timely submitted a Statement and Proof of Claim (Claim 160) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 160 was submitted for a total 16.62 cubic feet per second (cfs) of water from "Upper Klamath Lake and Drainage into Canal," being 3.34 cfs for irrigation of 37.0 acres, 0.15 cfs for industrial use, and 13.13 cfs for fire suppression. The claimed season of use for irrigation was "May 1 through October 1," and "12 months of the year" for industrial use and fire suppression. The claimed priority date is 1905.

3. MATTHEW W. BEDDOE, corporate counsel for JELD-WEN, INC., signed the Statement and Proof of Claim for Claim 160 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 claim was denied because the required pre-1909 elements were not established for the claim.

5. On May 5, 2000, the Claimant timely filed Contest 2043 to the Preliminary Evaluation of Claim 160.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3154 to the Claim and/or Preliminary Evaluation of Claim 160.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3401: 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 Pritchard[2], Don Vincent[3], 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. On May 8, 2000, the United States of America timely filed Contest 3829 to the Claim and/or Preliminary Evaluation of Claim 160.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4170 to the Claim and/or Preliminary Evaluation of Claim 160.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 121.

11. On June 3, 2002, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3154. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT (June 3, 2002).

12. On June 30, 2005, OWRD, the Claimant, Klamath Project Water Users, Rogue River Valley Irrigation District, Medford Irrigation District, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2043, 3154, 3401, 3829, AND 4170 (Settlement Agreement) thereby resolving all remaining contests to Claim 160.

13. On July 8, 2005, the Adjudicator withdrew Case 121 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3401 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3401 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3401 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant, Klamath Project Water Users, Rogue River Valley Irrigation District, Medford Irrigation District, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 160 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 160

CLAIM MAP REFERENCE: CLAIM # 160, PAGE 120

CLAIMANT: JELD-WEN, INC.
401 HARBOR ISLES BLVD
KLAMATH FALLS OR 97601

SOURCE OF WATER:
UPPER KLAMATH LAKE AND WASTEWATER, tributary to KLAMATH RIVER

PURPOSE or USE: MAINTENANCE OF FIRE SUPPRESSION SYSTEM; INDUSTRIAL USES

RATE OF USE:
13.28 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.15 CFS FOR INDUSTRIAL USE AND 13.13 CFS FOR MAINTENANCE OF FIRE SUPPRESSION SYSTEM

PERIOD OF ALLOWED USE:

Use	Period
Maintenance of Fire Suppression System	January 1 - December 31
Industrial Uses	January 1 - December 31

DATE OF PRIORITY: DECEMBER 1, 1905

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	9 E	WM	19	NE NW	6

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MAINTENANCE OF FIRE SUPRESSION SYSTEM					
Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	9 E	WM	18	SW SW	5
38 S	9 E	WM	18	SW SE	1
38 S	9 E	WM	18	SE SW	6
38 S	9 E	WM	19	NW NE	5
38 S	9 E	WM	19	SW NE	4
38 S	9 E	WM	19	NE NW	6
38 S	9 E	WM	19	NW NW	7

INDUSTRIAL USES					
Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	9 E	WM	18	SW SW	5
38 S	9 E	WM	18	SW SE	1
38 S	9 E	WM	18	SE SW	6
38 S	9 E	WM	19	NW NE	5
38 S	9 E	WM	19	SW NE	4
38 S	9 E	WM	19	NE NW	6
38 S	9 E	WM	19	NW NW	7

FURTHER LIMITATIONS:

THE USE OF WATER FOR THE PURPOSE OF THE MAINTENANCE OF A FIRE SUPRESSION SYSTEM CANNOT BE TRANSFERRED TO ANY OTHER USE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 CITY OF KLAMATH FALLS; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 161

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 161 (Co-Claimants: CITY OF KLAMATH FALLS; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3155) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 161 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 161, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 161 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 161

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: CITY OF KLAMATH FALLS
PO BOX 237
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.3 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lots	Remarks
38 S	9 E	WM	32	NE SW	12	0.3	7500 (120 Riverside Drive) 7501 (128 Riverside Drive)	Lot 1, Lot 2, and Northern Portion Lot 3 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 HERBERT C. LESUEUR AND MARY-LOUSIE LESUEUR; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 162

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 162 (Co-Claimants: HERBERT C. LESUEUR AND MARY-LOUSIE LESUEUR; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (2852, 3156, and 4171) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 162 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 162, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 162, 152, 153, 155, 156, 157, 158, 162, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 162 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 162

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: HERBERT C. LESUEUR
MARY-LOUSIE LESUEUR
572 CONGER AVE
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.9 ACRES

RATE OF USE:
0.02 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lots	Remarks
38 S	9 E	WM	32	SW NW	8	0.9	2900, 2901, 3000	572 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JEANENE M. OATMAN; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	))))	PARTIAL ORDER OF DETERMINATION
_____		Water Right Claim 163

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 163 (Co-Claimants: JEANENE M. OATMAN; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3157) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 163 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 163, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 163 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 163

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: JEANENE M. OATMAN
430 RIVERSIDE DR.
KLAMATH FALLS OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SE SW	11	0.1	900 (430 Riverside Drive)	Lot 14 in Block 4 of West Klamath Falls Addition

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 164

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, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 164) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 164 was submitted for a total of 0.02 cubic feet per second (cfs) of water from the Link River, a tributary of the Klamath River, for irrigation of 0.4 acres, with a season of use April 1 to October 30. The claimed priority date is December 11, 1891.

3. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 164 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 claim was denied because the required pre-1909 elements were not established for the claim.

5. On May 5, 2000, the Claimant timely filed Contest 2053 to the Preliminary Evaluation of Claim 164 contesting the Adjudicator's denial of the claim.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3158 to the Claim and/or Preliminary Evaluation of Claim 164.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 13.

8. On January 14, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3174. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 14, 2002).

9. On June 11, 2002, the OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. executed a STIPULATION TO DISMISS CONTEST NO. 2053 (Settlement Agreement) thereby resolving the remaining contest to Claim 164.

10. On August 13, 2002, the Adjudicator withdrew Case 13 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. is adopted and incorporated as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 164 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 164

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 38 S, R 9 E

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 0.4 ACRES.

RATE OF USE:

0.01 CUBIC FEET PER SECOND (CFS) 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
38 S	9 E	WM	30	NW SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	9 E	WM	32	NW SW	1	0.4

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 165

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 165 (Claimant: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contests (44, 2054 and 3159) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 165 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 165, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Finding of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 165 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 165

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:

IRRIGATION OF 4.0 ACRES

RATE OF USE:

0.1 CUBIC FOOT PER SECOND (CFS) 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lots	Remarks
38 S	9 E	WM	32	SW NW	8	1700	706 Conger Avenue
						1800	702 Conger Avenue
						1900	680 Conger Avenue
						2000	640 Conger Avenue
						2100	636 Conger Avenue
						2200	622 Conger Avenue
						2400	616 Conger Avenue
						2600	614 Conger Avenue
						2800	612 Conger Avenue
						2900, 2901, 3000	572 Conger Avenue

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM WHEN COMBINED WITH USE OF WATER UNDER KLAMATH BASIN ADJUDICATION CLAIMS 146, 149, 152, 153, 155, 159, 162, AND 169, WHICH INCLUDE PORTIONS OF THE SAME PLACE OF USE DESCRIBED IN THIS CLAIM, MAY NOT EXCEED A TOTAL OF 4.0 ACRES AT MAXIMUM RATE OF 0.1 CFS AND A DUTY OF 3.5 ACRE-FEET PER ACRE PER YEAR.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 166

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 166 (Claimant: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contests (2055 and 3160) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 166 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 166, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 166 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 166

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 3.1 ACRES

RATE OF USE:
0.08 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lots	Remarks
38 S	9 E	WM	32	NE SW	12	7500 (120 Riverside Drive)	Lots 1 through 18 in Block 4 of West Klamath Falls Addition
						7501 (128 Riverside Drive)	
						7600 (142 Riverside Drive)	
						7700 (204 Riverside Drive)	
						7800 (214 Riverside Drive)	
						7900 (234 Riverside Drive)	
						8000 (238 Riverside Drive)	
						8100 (300 Riverside Drive)	
						200 (318 Riverside Drive)	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lots	Remarks
38 S	9 E	WM	32	SE SW	11	300 and 400 (324 Riverside Drive)	Lots 1 through 18 in Block 4 of West Klamath Falls Addition
						500 (402 Riverside Drive)	
						600 (346 Riverside Drive)	
						700 (406 Riverside Drive)	
						800 (416 Riverside Drive)	
						900 (430 Riverside Drive)	
						1000 (444 Riverside Drive)	
						1100 (446 Riverside Drive)	
						1300 (500 Riverside Drive)	
						1400 (532 Riverside Drive)	

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM WHEN COMBINED WITH USE OF WATER UNDER KLAMATH BASIN ADJUDICATION CLAIMS 145, 147, 148, 150, 151, 154, 156, 157, 158, 161, AND 163, WHICH INCLUDE PORTIONS OF THE SAME PLACE OF USE DESCRIBED IN THIS CLAIM, MAY NOT EXCEED A TOTAL OF 3.1 ACRES AT A MAXIMUM RATE OF 0.08 CFS AND DUTY OF 3.5 ACRE-FEET PER ACRE PER YEAR.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 167

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 167 (Claimant: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contests (3161 and 3279) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 15.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on July 19, 2002, approving Claim 167.

3. Exceptions were filed to the Proposed Order by Medford Irrigation District and Rogue River Valley Irrigation District within the exceptions filing deadline. *See* MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS' EXCEPTIONS TO PROPOSED ORDER (Aug. 16, 2002).

4. The exceptions were referred to the Office of Administrative Hearings for comment.

5. In comments to the exceptions, the Administrative Law Judge from the Office of Administrative Hearings, in summary, stated: "The exceptions presented in this case have no merit. The Adjudicator should make no changes in the order to accommodate them."

6. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.7, below, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of

Determination for Claim 167. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

7. **Findings of Fact.** The Proposed Order Findings of Fact # 5 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> (5) Contestant Irrigation Districts hold established water rights to store water in Four Mile Lake and Fish Lake with a priority date of March 31, 1910. These ~~streams and storage facilities~~ established water rights are not subject to the Klamath adjudication because of their post 1909 priority date.

Reason for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 167. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 167 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 167

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, W.M.

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE or USE: POWER

RATE OF USE: 150.0 CUBIC FEET PER SECOND MEASURED AT THE POINT OF DIVERSION

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: NOVEMBER 1, 1985

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	9 E	WM	30	NW SE	4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	32	NW NW	7	East Side Power Plant

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 168

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. On January 31, 1991, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 168) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 168 and its associated contests (2056, 3162, and 3280) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 15.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on July 11, 2002, approving Claim 168.

4. Exceptions were filed to the Proposed Order by Medford Irrigation District and Rogue River Valley Irrigation District within the exceptions filing deadline. *See* MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS' EXCEPTIONS TO PROPOSED ORDER (Aug. 16, 2002).

5. The exceptions were referred to the Office of Administrative Hearings for comment.

6. In comments to the exceptions, the Administrative Law Judge from the Office of Administrative Hearings, in summary, stated: "The exceptions presented in this case have no merit. The Adjudicator should make no changes in the order to accommodate them."

7. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted with modifications, as set forth in Section A.8, below.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, below.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.10, below.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.11, below.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 168. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **History of the Case.** Within the section titled "History of the Case" of the Proposed Order, the first sentence is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> The proceeding in the Klamath Basin Water Adjudication was commenced by a claim filed on January 31, ~~1981~~ 1991 by Pacificorp based upon use of water beginning prior to February 24, 1909. (OWRD Ex. 1 at 3-7.)

Reason for Modification: The ALJ's finding with respect to the year the claim was filed is not supported by a preponderance of evidence in the record; to provide an additional citation to the record.

9. **Evidentiary Rulings.** Within the section titled "Evidentiary Rulings" of the Proposed Order, paragraphs 3, 4 and 5 are modified as follows (additions are shown in "underline" text and deletions are show in "~~strikethrough~~" text):

> The evidence objected to describes the development of works for diversion of water from Four Mile Lake to Fish Lake, and the history of the water rights attendant to that diversion. It is offered to support the proposition, stated in the Districts' contest, that the appropriation of water

by Pacificorp should be conditioned so as to prevent a call that would conflict with the District's rights to the water in Four Mile Lake. The evidence is relevant to that issue and is admitted.

~~It is suggested that the adjudicator does not have the authority to impose such a condition as the Districts' propose. If this were so, then Pacificorp's objection would be well taken, since if the adjudicator cannot grant the relief requested, evidence in support of that relief would be immaterial.~~

~~However, I am not prepared to decide in the abstract whether, as a matter of law, the adjudicator is authorized to grant such relief in specific cases, if the evidence would not support the exercise of that authority even if it existed. The parties have not briefed that question in this case, and the arguments presented at the hearing regarding it were somewhat cursory. In order to decide whether it is necessary to reach the issue of the adjudicator's authority, I must review the evidence to determine whether it would support the imposition of the condition requested, even if such a condition was authorized. I find the evidence relevant and material to the determination whether, even if authorized, the relief should be allowed in this case. Consequently, the objection is overruled, and the evidence admitted.~~

Reason for Modification: For internal consistency between the "Opinion" section, as modified, and the "Evidentiary Rulings."

10. **Conclusion of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusion #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

~~The evidence is insufficient to determine whether water from the Klamath Basin described in the water rights held by Rogue River Valley Irrigation District and Medford Irrigation District should "be 'water available' for~~

~~appropriation under the Klamath Adjudication.~~ Relief that regulates actual water use is inappropriate in this proceeding, the purpose of which is to determine the relative water rights of the parties.

Reason for Modification: For internal consistency between the "Opinion" section, as modified, and the "Conclusions of Law."

11. **Opinion.** Within the section titled "Opinion" of the Proposed Order, the second introductory paragraph and the subsection "Four Mile Lake" are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

There are really only two issues presented in this case that merit discussion. First, does the record support OWRD's conclusion that the priority date of Pacificorp's water right should be October 16, 1905, or should it be December 11, 1891 as Pacificorp asserts? Second, may the Districts obtain relief that regulates actual water use in this proceeding? If they may, is the water in Four Mile Lake to be treated as part of the Klamath Basin, and therefore subject to this adjudication~~, or is it not~~?

Four Mile Lake

In their contest the Districts asked the Adjudicator to impose a condition on Pacificorp's water right barring Pacificorp from making a call on water from Four Mile Lake. ~~Aside from the question as to whether the Adjudicator would ever be authorized to impose such a condition, the record does not justify such an imposition in this case in any event.~~

~~Either Four Mile Lake originally had an outlet to Klamath Lake, or it did not. The evidence on this question is not conclusive, but the Districts appear to have concluded that at one time the two lakes were connected. The amount of water that actually reached Klamath Lake, if any, is completely unknown on this record.~~

~~If water from Four Mile Lake originally flowed into Klamath Lake, then the watershed of that lake is part of the Klamath Basin, and was originally part of the watershed that supplied Klamath Lake. Since the appropriation for the~~

~~diversion of the water of Four Mile Lake to Fish Lake was not recorded until the 1900s, it would have supplied part of the water flowing through Link River when Pacificorp's predecessor appropriated water in 1891. As such, it would have been included as junior to that appropriation, and should not be removed from it now.~~

~~However, the evidence is insufficient in this record to establish that the water in Four Mile Lake ever actually did flow to Klamath Lake. If the water from Four Mile Lake never flowed into Klamath Lake, it could not be treated as subject to Pacificorp's water right. In that event there would be no need or reason for imposition of a condition on Pacificorp's water right, since the water in Four Mile Lake could never be subject that water right.~~

~~Since, on this record, there is not enough evidence to determine whether or how much water from Four Mile Lake flowed to Klamath Lake, there is no evidentiary basis for imposing the condition sought by the districts, and their request must be denied.~~

The relief the Districts seek is one of regulation and is not appropriate to this proceeding, which is to determine the relative water rights of the parties, not regulate actual water use. Accordingly, it is unnecessary to decide the factual issue of whether or how much water flowed from Four Mile Lake to Klamath Lake.

Like most western states, Oregon follows the "prior appropriation" doctrine, which addresses which water rights are honored in times of shortage. See Robert E. Beck, *Prevalence and Definition*, 2 Waters and Water Rights, 83 (Robert E. Beck, ed. 1991). *See also* Janet C. Neuman, "Oregon," *in 6 Waters and Water Rights*, 704 (2d ed 1994). Under the prior appropriation doctrine, "a person may acquire an appropriative right on a 'first come, first served' basis by diverting water and applying it to a beneficial use." *Teel Irrigation District v. Water Resources Dept.*, 323 Or 663,667 (1996).

The prior appropriation doctrine governs distribution of water as well as the allocation of water and in times of shortage addresses which holder of water rights can receive water. Water rights holders with a later (junior) priority date are

not entitled to use water if their use would interfere with the rights of those who have earlier (senior) priority dates. Thus a water right is not an absolute right to use water, but a relative right that may only be exercised within the priority system. ORS 537.120 (subject to existing rights, and other exceptions not pertinent here "waters within the state may be appropriated for beneficial use"); ORS 540.045 (describing watermaster duties to "distribute water among the various users . . . in accordance with the users' existing water rights of record").

Contestant Irrigation Districts seek to prevent Claimant Pacificorp from placing a "call" on waters to which the Irrigation Districts have established water rights by conditioning Pacificorp's water right to prevent such a "call." Strictly speaking, water users do not place a "call" on other users' water rights. Rather, a water user places a "call" on the stream, river, or other source that supplies its right by demanding that the watermaster distribute water among the various users according to their water rights of record. ORS 540.045. It is then the watermaster's duty to determine how that "call" shall be enforced. *Id.* The watermaster is empowered to enforce a "call" by directly regulating a water user's diversion. ORS 540.045(c). The condition that Contestants seek, therefore, is one pertaining to regulation of water rights, not to the rights themselves.

The purpose of this proceeding is to identify and determine the relative rights of individuals and entities who began using water before February 24, 1909. ORS 539.010; 539.021. Only after identification, quantification and determination of those relative rights have been completed can there be meaningful discussion regarding regulation of those rights. ORS 540.045 (watermasters regulate in accordance with "rights of record"); ORS 540.145 (the Water Resources Commission may adopt rules pertaining to distribution of water pursuant to, among other things, rights established by "an order of the . . . Director in proceedings for the determination of relative rights to the use of water."). Thus, if a "call" or complaint is placed with the watermaster, he or she will then regulate in accordance with "rights of record" and other applicable law. *Id.*; *see* OAR 690-250-0020 (distribution of surface waters). Neither general

principals of the prior appropriation doctrine nor the applicable statutes entitle contestant Irrigation Districts to the regulatory condition they seek to impose on Claimant Pacificorp's Claim No. 168. Claimant Pacificorp's water right should not be conditioned in the manner that these Contestants seek.

Reason for Modifications: To clarify the basis supporting modified Conclusion of Law #1.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted with modifications, as set forth in Section A.8, above.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, above.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.10, above.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.11, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 168. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 168 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 168

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, W.M.

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER:
The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE or USE: POWER

RATE OF USE: 205.0 CUBIC FEET PER SECOND MEASURED AT THE POINT OF DIVERSION

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: October 16, 1905

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	9 E	WM	30	NW SE	4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	32	NW SW	1	West Side Power Plant

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 TERREL J. WAGSTAFF; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 169

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 169 (Co-Claimants: TERREL J. WAGSTAFF; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (45 AND 3163) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 169 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 169, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scriveners error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~strikethrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 169, 152, 153, 155, 156, 157, 158, 169, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.

3. Based on the file and record herein, IT IS ORDERED that Claim 169 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 169

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: TERREL J. WAGSTAFF
680 CONGER AVE
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.2 ACRES

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.2	1900	680 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JOSEPH E. AND FRANCES M. BROOKS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 170

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 1, 1990, JOSEPH E. AND FRANCES M. BROOKS (Claimants) timely submitted a Statement and Proof of Claim (Claim 170) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 170 was submitted for a total of 0.22 cubic feet per second (cfs) of water from an unnamed spring, tributary to Burnt Creek, for irrigation of 8.8 acres with an April to October season of use. The claimed priority date is 1893.

3. Item 13 of the Statement and Proof of Claim incorporates an Affidavit dated November 15, 1968, signed by Elmer L. Kincade. The Affidavit states in pertinent part: "I have been familiar with the use of the Southwest Quarter of Section 8, Township 39 Sough, Range 3 East of the Willamette Meridian for over seventy-five years. In my opinion, the use of these two springs, for irrigation, stock, and household use, has been in effect almost continuously for over seventy-five years" (Claim # 170, Page 005).

4. JOSEPH E. AND FRANCES M. BROOKS signed the Statement and Proof of Claim for Claim 170 attesting that the information contained in the claim is true.

5. In 1981, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 170 (Claim # 170, WIP, Page 00008).

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 claim was approved.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 170.

8. Based on the sworn statements in Claim 138, along with the field inspection report, the following findings are made:

   a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

   b. The Claimants created a diversion, where necessary, to divert water from its natural source.

   c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 170 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 170

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 3 E

CLAIMANT: JOSEPH E. AND FRANCES M. BROOKS
2704 STEARNS WAY
MEDFORD, OR 97501

SOURCE OF WATER: UNNAMED SPRING, tributary to BURNT CREEK

PURPOSE or USE: IRRIGATION OF 8.8 ACRES.

RATE OF USE:

0.22 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1893

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	3 E	WM	8	SW SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	3 E	WM	8	SW SW	8.80

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 DONALD E. ROWLETT	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 171

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 171 (Claimant: DONALD E. ROWLETT) and its associated contests (3402, 3830, and 4172) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 122.

2. On September 18, 2003, the Claimant, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS AND TO RECOMMEND A FINAL DETERMINATION OF THE CLAIM (Settlement Agreement) thereby resolving all matters.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 171 on February 11, 2004.

4. No exceptions were filed to the Proposed Order.

5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 171. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 171. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 171 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 171

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 39 S, R 4 E and T 40 S, R 4 E

CLAIMANT: DONALD E. ROWLETT
16799 HWY 66
ASHLAND, OR 97520

SOURCE OF WATER:
SOUTH FORK BEAVER CREEK and BEAVER CREEK, tributary to JENNY CREEK; and TWO UNNAMED STREAMS, tributary to BEAVER CREEK

PURPOSE OR USE: IRRIGATION OF 94.6 ACRES

RATE OF USE:
2.36 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: MARCH 15 - NOVEMBER 15

DATE OF PRIORITY: DECEMBER 31, 1906

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Source Name	Twp	Rng	Mer	Sec	Q-Q
South Fork Beaver Creek	39 S	4 E	WM	31	NE NE
Beaver Creek	39 S	4 E	WM	31	NE NE
Unnamed Stream	39 S	4 E	WM	31	NE SE
Unnamed Stream	39 S	4 E	WM	32	SW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	4 E	WM	32	NW SW		8.0
39 S	4 E	WM	32	SW SW		28.0
39 S	4 E	WM	32	SE SW		8.0
40 S	4 E	WM	5	NW NE	2	4.0
40 S	4 E	WM	5	NE NW	3	38.8
40 S	4 E	WM	5	NW NW	4	3.6
40 S	4 E	WM	5	SW NW		0.2
40 S	4 E	WM	5	SE NW		4.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 SOUTHERN OREGON UNIVERSITY FOUNDATION	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 172

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 24, 1991, MAXWELL P. GUILEY, SR. AND LOUISE D. GUILEY timely submitted a Statement and Proof of Claim (Claim 172) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication and is based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 172 was submitted for a total of 0.005 cubic feet per second (cfs) of water from Johnson Creek, a tributary of Jenny Creek, for instream livestock watering of 150 plus head of cattle. The original claimants did not specify a season of use. The claimed priority date is February 1, 1908.

3. Item 14 of the Statement and Proof of Claim incorporates an attachment which is a signed statement that states in pertinent part: "My [Maxwell P. Guiley, Sr.] grandfather, Charles D. Rifner, was living on the land as described in item 12. of application, and raising cattle on or about February 1, 1908, and using Johnson Creek as the source of water for his stock." (Claim # 172, Page 008).

4. MAXWELL P. GUILEY, SR. AND LOUISE D. GUILEY signed the Statement and Proof of Claim for Claim 172 attesting that the information contained in the claim is true.

5. In 1998, a field inspection report was prepared by a private engineer or surveyor describing the present use of water on the property substantially as stated in Claim 172, but also with a statement noting that livestock watering occurs from April 1 to October 31 (Claim # 172, Page 023).

6. On December 27, 1999, the title to the property associated with Claim 172 was transferred to the SOUTHERN OREGON UNIVERSITY FOUNDATION (Claimant). *See* COUNTY OF KLAMATH RECORDS, VOL. M99, PAGE 51022 (Claim # 172, Page 30).

7. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than claimed.

8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 172.

9. OWRD finds a priority date of February 1, 1908, per evidence submitted with Claim 172. (Claim # 172, Pages 008 through 015).

10. Based on the sworn statements in Claim 138, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Based on the file and record herein, IT IS ORDERED that Claim 172 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 172

CLAIM MAP REFERENCE: CLAIM # 172, PAGE 023

CLAIMANT: SOUTHERN OREGON UNIVERSITY FOUNDATION
1250 SISKIYOU BLVD
ASHLAND OR 97520

SOURCE OF WATER: JOHNSON CREEK, tributary to JENNY CREEK

PURPOSE or USE: INSTREAM LIVESTOCK WATERING FOR 150 PLUS HEAD

RATE OF USE:
0.005 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 3230 GALLONS PER DAY

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: FEBRUARY 1, 1908

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Instream Livestock Watering
39 S	5 E	WM	18	SE NE	No specific point of diversion, livestock drink directly from Johnson Creek

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	5 E	WM	18	SE NE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 RICHARD K. HART	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 173

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 173 (Claimant: RICHARD K. HART, 812 BEACH AVE, CALEXICO, CA 92231) and its associated contests (3831 and 4173) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 123.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on January 27, 2004, denying Claim 173.

3. No exceptions were filed to the Proposed Order.

4. The Proposed Order is adopted and incorporated in its entirety in its entirety as if set forth fully herein, with the exception that the portion of the "Opinion" is adopted with modifications, as set forth in Section A.5, below.

5. **Opinion.** Within the section titled "Opinion" of the Proposed Order, the following sentence (shown in "underline" text) is added to the first paragraph:

   > One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the "proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***." *In re Silvies River*, 115 Or 27, 66 (1925).

   Reason for Modification: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the portion of the "Opinion" is adopted with modifications, as set forth in Section A.5, above.

2. Based on the file and record herein, IT IS ORDERED that Claim 173 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KENNETH J. ANDERSON AND JERRY D. ANDERSON	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 174

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 October 29, 1990, MERLE ANDERSON timely submitted a Statement and Proof of Claim (Claim 174) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 174 was submitted for a total 0.25 cubic feet per second (cfs) of water from Spencer Creek, a tributary of the Klamath River, for irrigation of 9.6 acres, with a season of use "May 15 – Oct. 15." The claimed priority date is June 1886.

3. A copy of a deed from the State of Oregon to C. E. Nininger, "DEED, STATE RECORD OF DEEDS, BOOK 2, PAGE 537 (Feb. 19, 1889)," is incorporated into the Statement and Proof of Claim by reference (Claim # 174, Page 027).

4. MERLE ANDERSON signed the Statement and Proof of Claim for Claim 174 attesting that the information contained in the claim is true.

5. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 174 (*See* Claim 174, WIP, Page 00010).

6. The property appurtenant to Claim 174 was subsequently acquired by KENNETH J. ANDERSON AND JERRY D. ANDERSON (Claimants). *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M95, PAGE 26619 (Oct. 2, 1995), (Claim # 174, Page 030).

7. On May 26, 1999, the Claimants supplemented information to Claim 174 by providing a statement signed by Merle W. Anderson, stating in pertinent part: "The property in question was purchased by the Andersen family from C.E. Nininger and wife in 1896.

They had owned the property approximately seven years during which time they had built quite an extensive irrigation system." (Claim # 174, Page 019).

8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved.

9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3164 to the Claim and/or Preliminary Evaluation of Claim 174.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 25.

11. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3164. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 30, 2001).

12. On February 13, 2002, Contest 3164 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

13. Based on the sworn statements in Claim 174, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 174 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 174

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 7 E

CLAIMANT: KENNETH J ANDERSON
JERRY D ANDERSON
29331 "A" ST
KLAMATH FALLS, OR 97601

SOURCE OF WATER: SPENCER CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 9.6 ACRES.

RATE OF USE:

0.24 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 15 - OCTOBER 15

DATE OF PRIORITY: JUNE 30, 1886

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	7 E	WM	19	SW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 E	WM	19	SW NW	9.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 LARRY ORVILLE JAMES AND GEORGIA LYNN SIEBENLIST	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 175

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 29, 1990, WINIFRED JOY JAMES timely submitted a Statement and Proof of Claim (Claim 175) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 175 was submitted for a total 0.25 cubic feet per second (cfs) of water from Spencer Creek, a tributary of the Klamath River, for irrigation of 9.6 acres, with a season of use "June 1 – Sept. 30." The claimed priority date is 1896.

3. WINIFRED JOY JAMES signed the Statement and Proof of Claim for Claim 175 attesting that the information contained in the claim is true.

4. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 175. The report also includes the statement: "Met with Jerry Anderson at the ranch and he said that it was the original Lynn Anderson homestead. The water use began at that time, 1886 and has been used for irrigating the pasture and stock water." (Claim 175, WIP Page 0005).

5. The property appurtenant to Claim 175 was transferred to LARRY ORVILLE JAMES AND GEORGIA LYNN SIEBENLIST (Claimants) from WINIFRED JAMES. *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M 93, PAGE 4456 (Mar. 3, 1993), (Claim # 175, Page 020).

6. On May 24, 1999 the Claimants supplemented information to Claim 175 by providing a copy of a deed from the State of Oregon to C.E. Nininger, "DEED, STATE OF OREGON, BOOK OF DEEDS, VOL. 4, PAGE 387 (Mar. 19, 1889)," (Claim # 175, page 029).

7. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than claimed and an earlier priority date than claimed.

8. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3165 to the Claim and/or Preliminary Evaluation of Claim 175.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 26.

10. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3165. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).

11. On February 13, 2002, Contest 3165 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

12. OWRD finds the priority date to be 1896, as claimed.

13. Based on the sworn statements in Claim 175, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 175 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 175

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 7 E

CLAIMANT: LARRY ORVILLE JAMES
GEORGIA LYNN SIEBENLIST
1564 WHITMAN
MEDFORD, OR 97501

SOURCE OF WATER: SPENCER CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 9.6 ACRES.

RATE OF USE:

0.24 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: JUNE 1 - SEPTMEBER 30

DATE OF PRIORITY: DECEMBER 31, 1896

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	7 E	WM	19	SW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 E	WM	19	SE NW	9.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 HAROLD W. SIMMERS	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 176

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 29, 1990, HAROLD W. SIMMERS timely submitted a Statement and Proof of Claim (Claim 176) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 176 was submitted for a total 0.125 cubic feet per second (cfs) of water from Spencer Creek, a tributary of the Klamath River, for irrigation of 4.0 acres, with a season of use "June 1 – Sept. 30." The claimed priority date is 1896.

3. HAROLD W. SIMMERS signed the Statement and Proof of Claim for Claim 176 attesting that the information contained in the claim is true.

4. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 176. The report also includes the statement: "Met with Jerry Anderson at the ranch and he said that it was the original Lynn Anderson homestead. The water use began at that time, 1886 and has been used for irrigating the pasture and stock water." (Claim 176, WIP Page 00016).

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 claim was approved, but for a smaller quantity of water than claimed and an earlier priority date than claimed.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3166 to the Claim and/or Preliminary Evaluation of Claim 176.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 27.

8. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3166. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).

9. On February 12, 2002, Contest 3166 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 12, 2002).

10. OWRD finds the priority date to be 1896, as claimed.

11. Based on the sworn statements in Claim 176, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 176 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 176

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 7 E

CLAIMANT: HAROLD W. SIMMERS
5925 CLIMAX ST.
KLAMATH FALLS, OR 97603

SOURCE OF WATER: SPENCER CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 4.0 ACRES.

RATE OF USE:

0.1 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: JUNE 1 - SEPTMEBER 30

DATE OF PRIORITY: DECEMBER 31, 1896

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	7 E	WM	19	SE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 E	WM	19	NW SE	4.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 RUTH A. ANDERSON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 177

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 177 (Claimant: RUTH A. ANDERSON) and its associated contests (3167, 3403, 3832, 4172) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Consolidated Cases 124, 126, and 127[1].

2. The Office of Administrative Hearings (OAH) conducted contested case proceedings and issued a PROPOSED ORDER (Proposed Order) for Claims 177, 182, and 183 on July 22, 2004.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States, the Klamath Tribes, and Claimants. Responses to exceptions were timely filed by the United States and Claimants.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 177, 182, and 183, and are found to be persuasive in part; therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8, and A.9, below.

5. The evidentiary record for Claims 177, 182 and 183 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 177.

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[1] [1] Claim 177 (Case 124), Claim 182 (Case 126), and Claim 183 (Case 18) were consolidated by Order for hearing. (*See* ORDER GRANTING MOTION TO RESET AND MOTION TO CONSOLIDATE, June 21, 2002.)

6. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues Presented" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Sections A.7, below.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.9, below.
   g. The "The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 177. Consistent with Sections A.7, A.8 and A.9, below, the outcome of the Order has been modified to restrict the recognized purposes of use to irrigation and livestock, and to identify the appropriate priority dates as August 16, 1879 and December 31, 1899.

7. **Findings of Facts.** The Proposed Order's "Findings of Fact" section is modified as shown below. Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

   a. Modified Proposed Order Finding of Fact 10

   10. From the time title was acquired to the properties by their first record holders other than the United States, until the flow of the Klamath River came under control through construction of dams, after 1909, the properties were subjected to ~~irrigation by~~ natural overflow from the Klamath River on a seasonal basis~~, and were used for grazing and hay~~. (Ex. 124E00002002 at 17-32.) The claimed lands not included within the Miller Swamp Land Deed were beneficially used for haying and grazing no later than December 31, 1899. *Id.* In the early years of the 20th century, berms and ditches were constructed to control the flow of water on the property. (Ex 124E00002002 at 26, 31.) After the Klamath River was controlled, the properties were irrigated through a series of ditches, drawing water directly from the Klamath River. (Ex. 124E00007006 at 18.)

   Reasons for Modifications: The deleted text is not supported by a preponderance of evidence in the record. The additional text reflects earliest date by which a preponderance of evidence supports beneficial use of water on lands not included within the Miller Swamp Land Deed.

8. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 19, and 20 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   (1) There is sufficient evidence to support a portion of the right claimed.

(2) The record supports the rate, duty, ~~actual use,~~ points of diversion and acreage as allowed in the Preliminary Evaluations.

(3) The record establishes use of water for irrigation and livestock. ~~as claimed.~~

(5) The claimed use of water prior to February 24, 1909 for wildlife habitat is not supported by a preponderance of the evidence in the record. ~~is not wasteful.~~

(6) ~~Claimants have not changed the use of water from irrigation to wildlife without complying with Oregon Statutory procedures for securing a change in use.~~ To the extent that water is held in ponds on the property solely for use by wildlife, this constitutes an impermissible change in use as a result of injury to other water users.

(7) Claimants are using the water for the claimed irrigation and livestock uses.

(8) Claimants' use of water for irrigation and livestock is not detrimental to contestants' water rights.

(11) The claimed uses for irrigation and livestock were ~~was~~ developed within a reasonable time of the established date of appropriation. Under the facts in this case, beneficial use of natural overflow was sufficient to establish a vested right for irrigation and livestock purposes without the construction of irrigation works. ~~The record establishes the completion of works within a reasonable time after beginning construction or use of water.~~

(13) The claimed right for wildlife habitat is denied. It is therefore unnecessary to reach the issue of the use's consistency with the Klamath River Basin Compact. ~~has not been shown to have violated the Klamath River Basin Compact.~~

(14) The claimed right for wildlife habitat is denied. It is therefore unnecessary to reach the issue of whether the rights for wildlife habitat are subordinate to domestic and irrigation use pursuant to the Klamath River Basin Compact. ~~The evidence is sufficient to establish the relative priorities of rights for wildlife habitat and domestic and irrigation rights pursuant to the Klamath River Basin Compact.~~

(15) There is sufficient information on the development of water on this place of use prior to February 24, 1909, to establish a vested pre-1909 water right for irrigation and livestock uses.

(16) Natural flooding/~~subirrigation~~/natural overflow may form the basis for ~~gives rise to~~ a valid water right.

(19) An intent as of the established priority date to divert water or make beneficial use of natural overflow for wildlife has not been demonstrated.

(20) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of

regulation of water use by the OWRD Watermaster. ~~The waters from Four Mile Lake and Fish Lake, together with the flood, storm, springs, new, developed, discovered, salvaged, excess, reclaimed, surplus and captured waters thereof and their tributary including all water which may drain or flow into Cascade Canal connecting Four Mile Lake and Fish Lake may be "water available" for appropriation under the Klamath Adjudication.~~

Reason for Modifications: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the record, as described in the modified opinion section, below, supports conclusions other than those in the Proposed Order.

9. **Opinion.** The "Opinion" section of the Proposed Order has been replaced in its entirety with the following:

The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

1. Evidence of beneficial use

The Claimants have submitted Swamp Land Deeds covering most of the claimed place of use. The effect of these deeds depends on the circumstances in which they were issued. The Swamp Land Act of 1870 ("1870 Act") required proof of reclamation in order to obtain a deed. The definition of "reclamation" provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of $1 per acre. The Swamp Land Act of 1878 ("1878 Act") altered some of the provisions of the 1870 Act. An applicant under the 1870 Act could, under the terms of the 1878 Act, obtain a deed without proof of reclamation by payment of $2.50 per acre. (Section 10, p46). Otherwise, an applicant under the 1870 Act would still need to submit proof of reclamation. An applicant making an application under the terms of the 1878 Act (i.e., making an initial application after the effective date of the 1878 Act) could obtain a deed by payment of a minimum of $1 per acre without proof of reclamation. (Section 4, 42). Applications under the terms of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 ("1887 Act") made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been "reclaimed or paid" by the effective date of the 1887 Act, with the exception that such applicants who were also "actual settlers on lands of 320 acres or less" and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. Deeds issued under this provision were limited to 640 acres. Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the

1878 Act (i.e., without requiring proof of reclamation). The 1887 Act went into effect on February 16, 1887.

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.[2]

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than $2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for $2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the Swamp Land Deeds in this case, the deed issued to Miller in 1882 constitutes proof of beneficial use for irrigation, because the deed was issued for 2,194.61 acres on payment of $1 per acre. (124E00007006, Ex 4 and 5.) In addition, the minutes of the land board state that Miller submitted proof of reclamation. (*Id.*) This deed was issued on August 16, 1882. Because swamp lands were required to have been reclaimed for three years prior to issuance of a deed, the priority date for the portion of the claimed place of use covered by this deed is August 16, 1879.

The remaining deeds are not sufficient proof of beneficial use for irrigation. The Small and Logan deeds were issued after the effective date of the 1887 Act. The Callaghan deed was issued in 1886, but was issued for payment of $320 for the NW¼ of Section 36. The NW¼ is less than 320 acres, and there is no additional proof of reclamation accompanying the deed. While it is possible that beneficial use on this land was made prior to the issuance of the deed, the burden of proof lies with the Claimants.

Although there is evidence supporting use on the claimed land as early as 1858, the evidence does not support application for transfer of these lands into private ownership

[2] The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

during this period. While it is not always necessary for the owner of the land and the appropriator of the water to be the same in order to perfect a water right, there is no support for the position that private citizens could appropriate water for the benefit of swamp lands owned by the State before an application was filed for the lands under the Swamp Land Acts.

Other evidence of beneficial use on the claimed land is centered around the turn of the 19th century. Four separate witnesses provided affidavits in support of beneficial use on the claimed property during this time period. First, Frank Anderson states that an area including the claimed lands was irrigated and controlled by dikes and other water control "prior to the turn of the century." (OWRD Ex 1 at 31.) Second, Julian Ager states: "My father, in different years, harvested hay from across the river on Miller Island in Sections 35 and 36 and hauled his hay across on a barge which he built." (OWRD Ex 1 at 17.) Ager's mother is the daughter of OA Stearns, who owned land across the river from Miller Island. Ager's mother married Ager's father in 1900 "and having secured 120 acres from her father they built their home in which I was born." (*Id.*) It is possible that Ager's father's harvesting of hay from the claimed place of use occurred as early as 1900. Third, Winston Patterson states that his father, Clyde Patterson, put up hay on the Furber place, and that it was farmed and ranched since prior to the turn of the century. (*Id.* at 26.) Finally, Barney Hooper makes the following statement concerning a conversation he had with "Mr. Jess Johnson": "Mr. Jess Johnson knew that in the late 1800s they put up meadow hay and ran cows on all the ground on Miller Island, including the ground presently owned by the Furber family, including Ruth Anderson." (*Id.* at 23.)

All of these statements are hearsay. However, the consistency of the statements increases their reliability. Based on the combined weight of these statements, it is more likely than not that haying and grazing was occurring on the claimed land prior to 1909. Each of the statements places water use around the turn of the century, but none of the statements is precise. Without the evidence to more accurately fix a date for beneficial use, the most appropriate priority date for the claimed lands not covered by the Miller Swamp Land Deed is December 31, 1899.

2. Purposes of Use

The claimed purposes of use of water are irrigation, livestock, and wildlife. As described above, the claimed place of use was beneficially used for irrigation and livestock prior to 1909. There is insufficient evidence of intent to establish a separate wildlife use prior to 1909. The only evidence is that waterfowl landed on standing water on the property, and that some incidental hunting may have occurred.[3] This is insufficient to constitute an intentional development of a beneficial use for wildlife purposes. In addition, there is no evidence that use or practices with respect to wildlife have changed significantly since 1909. The claimed wildlife use is denied.

[3] Evidence of use of the land for hunting by members of the Klamath Tribes prior to private ownership of the land or a private claim on the land (such as a Swamp Land Act application) would be relevant only to a determination of rights arising from the Klamath Treaty of 1864, and not to the type of water right claimed here.

3. Place of Use

The places of use for each of the claims are listed in the Water Right Claim Description, below. Any parts of the places of use within Government Lots 2 through 9 in Section 35, Township 39 South, Range 8 East, W.M., are entitled to a priority date of August 16, 1879, as described above. The remaining parts of the places of use are entitled to a priority date of December 31, 1899.

4. Duty

No specific duty was claimed for Claims 177, 182, and 183. In the absence of evidence to the contrary the Adjudicator's standard duty of 3.5 acre-feet per acre for irrigation, as described in Appendix A to the Preliminary Evaluation, is applicable to rights recognized for these claims. (OWRD Ex. 1 at 471-73.)

5. Rate

Each of Claims 177, 182 and 183 claimed a rate of 31 cfs for irrigation (broken out into 8 cfs from POD # 1[4] and 23 cfs from POD #2), 1 cfs for livestock water, and 3 cfs for wildlife. (OWRD Ex. 1 at 3, 154, 311.) Although not clear from the claim documents, it is evident from later filings and testimony that these rates are intended to apply to the combined total of the places of use claimed in Claims 177, 182, and 183.

Both OWRD's Preliminary Evaluation and the Proposed Order found this rate to be excessive, and allowed a rate based on the Adjudicator's standard rate of 1/40th cfs/acre multiplied by the number of acres claimed.[5]

The testimony in support of the rates claimed states that the higher rate enables irrigation water to be applied more quickly. (Hearing Transcript at 172.) There is insufficient evidence, however, that this irrigation practice (which constitutes diversion at more than double the Adjudicator's standard rate) is necessary to accomplish the intended beneficial use. The irrigation rates determined in the Proposed Order and the Preliminary Evaluation for these claims are appropriate. The rates are as follows:

Claim 177:

POD 1: 0.78 cfs for irrigation of 31.2 acres;
POD 2: 4.11 cfs for irrigation of 164.2 acres;
4800 gallons per day for 400 head

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[4] Claim 183 claimed 7.6 cfs for irrigation from POD # 1, instead of 8 cfs.

[5] The Proposed Order concluded that the Claimants were limited to the rates listed in the Preliminary Evaluation because the Claimants did not file a contest to the Preliminary Evaluation. The Proposed Order's reasoning is in error. A claimant's burden in a contested case hearing in an adjudication under ORS Chapter 539 is to prove the claim elements. A claimant is not required to contest OWRD's Preliminary Evaluation in order to preserve the ability to meet that burden. The Preliminary Evaluation was OWRD's analysis of adjudication claims based on the evidence available to OWRD at the time. It does not prevent a claimant from presenting further evidence in support of the Claimants' claim during the contested case proceeding.

Claim 182:

POD 1: 1.78 cfs for irrigation of 71.2 acres
POD 2: 2.98 cfs for irrigation of 119.3 acres
4800 gallons per day for 400 head

Claim 183:

POD 1: 0.83 cfs for irrigation of 33.2 acres
POD 2: 2.81 cfs for irrigation of 112.6 acres
POD 1 & POD 2 - COMINGLED WATER: 34.3 acres
4800 gallons per day for 400 head

6. Season of Use

Claimants contend that the period of use for irrigation is year round. Each of the claims divided the irrigation season into two parts: "April 1 – October 31" and "winter for pre-crop irrigation." (OWRD Ex. 1 at 6, 172, 317.) The evidence does not support a year-round season for irrigation. Instead, prior to 1909, the land would begin flooding "in the early spring depending upon the snowpack and weather" and that "usually by June or July the water began to recede." (OWRD Ex. 1 at 34.) In addition, the evidence does not support the contention that the application of water during the winter provides any benefit to crop growth that could not be accomplished through application of water during a more typical irrigation season. The April 1 through October 31 irrigation season recognized in the Proposed Order is supported by the evidence, and is incorporated herein.

7. Abandonment

"Abandonment" is a question of fact, requiring evidence of an intentional forsaking or desertion, as well as a failure to use the water. *In re Willow Creek*, 74 OR 592 (1914); *Wimer v. Simmons*, 27 Or 1, 12 (1895). A sufficiently long period of non-use can, depending on the circumstances, constitute evidence of an intent to abandon. *See, e.g., In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996).

In this case, there was a considerable period of non-use after the Keno Dam was built in the 1930s. It cannot be said, however, that the water right was "abandoned" for non-use, since there is no evidence of such an intention. To the contrary, the flooding of the property as a result of the dam was the cause of extensive discussion, and, eventually the threat of litigation against COPCO, the dam owner, that resulted in construction of a dike to protect the property from flooding. Under these circumstances, the period of non-use does not constitute evidence of an intent to abandon the water right.

8. Over-appropriation / Interference with the Klamath Reclamation Project

No substantial evidence was presented on these issues. In addition, in the context of this adjudication, the question of "over-appropriation," or water shortage, is properly addressed as a matter of regulation by the watermaster according to the doctrine of prior appropriation. It will not be addressed here.

Reasons for Modifications: To apply the correct legal standards with respect to the effect of Swamp Land Deeds and the effect of a failure to contest the Adjudicator's Preliminary Evaluation to the findings of fact; to determine the appropriate priority dates, diversion rates, season of use, and purposes of use based on the evidence in the record; to make various clarifications with respect to the legal reasoning supporting the conclusions of law.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:

   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in it is entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.9, above.
   g. The "The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 177. Consistent with Sections A.7, A.8 and A.9, above, the outcome of the Order has been modified to restrict the recognized purposes of use to irrigation and livestock, and to identify the appropriate priority dates as August 16, 1879 and December 31, 1899.

2. The elements of a pre-1909 claim are established with respect to irrigation and livestock uses. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 177 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 177

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E

CLAIMANT: RUTH A. ANDERSON
825 OLD MIDLAND RD
KLAMATH FALLS, OR 97603

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 195.4 ACRES AND LIVESTOCK WATERING OF 400 HEAD

RATE OF USE:

4.8974 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

4.89 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, BEING 0.78 CFS FROM POD 1 AND 4.11 CFS FROM POD 2, AND

0.0074 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 4800 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - October 31
Livestock	January 1 - December 31

DATES OF PRIORITY:

AUGUST 16, 1879: IRRIGATION OF 42.0 ACRES (AS LISTED BELOW) FOR A TOTAL OF 1.05 CFS OF WATER AND LIVESTOCK WATERING

DECEMBER 31, 1899: IRRIGATION OF 153.4 ACRES (AS LISTED BELOW) FOR A TOTAL OF 3.84 CFS OF WATER AND LIVESTOCK WATERING

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	39 S	8 E	WM	35	SE SW	2
POD 2	39 S	8 E	WM	35	SW NW	4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	35	SE NE	9	0.4	POD 2	AUGUST 16, 1879
39 S	8 E	WM	35	SW NW	4	8.7		
39 S	8 E	WM	35	SE NW	6	6.1		
39 S	8 E	WM	35	NE SW	7	12.2		
39 S	8 E	WM	35	NW SW	3	14.3		
39 S	8 E	WM	35	NE SE	9	0.3		

IRRIGATION and LIVESTOCK WATERING								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	35	SW NE		16.7	POD 2	DECEMBER 31, 1899
39 S	8 E	WM	35	SE NE	10	10.2		
39 S	8 E	WM	35	SE NW	13	10.5		
39 S	8 E	WM	35	NE SW	14	18.4		
39 S	8 E	WM	35	NE SE	10	29.9		
39 S	8 E	WM	35	NW SE		30.8		
39 S	8 E	WM	36	NW SW	7	0.7		
39 S	8 E	WM	36	NW SW	10	5.0		
39 S	8 E	WM	36	SW NW	7	8.2	POD 1	DECEMBER 31, 1899
39 S	8 E	WM	36	NW SW	7	17.0		
39 S	8 E	WM	36	NW SW	10	6.0		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 CHRIS DOBSON, AND STEPHEN KUHLER	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 178

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 178 (Claimants: CHRIS DOBSON AND STEPHEN KUHLER) and its associated contests (3168, 3833, and 4175) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 125.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 178 on December 8, 2003.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the United States of America and (2) the Klamath Tribes.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 178, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues" is adopted in its entirety.
   d. The Proposed Order's "Findings of Fact," is adopted in its entirety. In addition, Proposed Order Finding of Fact 9 is added as set forth in Section A.6, below.

e. The "Conclusions of Law" is adopted in its entirety.
f. The "Opinion" is adopted with modifications, as set forth in Section A.7, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 178. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

6. **Findings of Fact.** Proposed Order Finding of Fact #9 is added as follows (additions are shown in "underline" text):

> (9) Because there is no evidence on the record to the contrary, the standard duty for irrigation is 3.5 acre-feet per acre as outlined in Appendix A of the Preliminary Evaluation of Claims (OWRD Ex. 1 at 100) and the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Proposed Order Finding of Fact #9 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard duty for irrigation.

Reason for Additional Finding of Fact: To include a finding regarding the duty for irrigation.

7. **Opinion."** Within the section titled "Opinion" of the Proposed Order, the following sentence (shown in "underline" text) is added to the first paragraph:

> One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the "proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***." *In re Silvies River*, 115 Or 27, 66 (1925).

Reason for Modification: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues" is adopted in its entirety.
   d. The Proposed Order's "Findings of Fact," is adopted in its entirety. In addition, Proposed Order Finding of Fact 9 is added as set forth in Section A.6, above.

e. The "Conclusions of Law" is adopted in its entirety.
f. The "Opinion" is adopted with modifications, as set forth in Section A.7, above.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 178. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 178 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 178

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E

CLAIMANT: CHRIS DOBSON
STEPHEN KUHLER
7 FOURTH ST, SUITE 25
PETALUMA, CA 94952

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 266.4 ACRES AND LIVESTOCK WATERING OF 150 HEAD

RATE OF USE:
6.6635 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

6.66 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.0035 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2250 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - October 31
Livestock Watering	April 1 - October 31

DATE OF PRIORITY: JUNE 21, 1906

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
39 S	8 E	WM	34	NE NE	1

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	8 E	WM	27	SW NE		2.6
39 S	8 E	WM	27	NW SE		34.7
39 S	8 E	WM	27	SW SE	3	36.8
39 S	8 E	WM	27	SW SE	5	2.5
39 S	8 E	WM	27	SE SE	4	34.9
39 S	8 E	WM	34	NE NE	1	25.0
39 S	8 E	WM	34	NW NE	1	5.5
39 S	8 E	WM	34	NW NE	8	22.9
39 S	8 E	WM	34	SW NE	7	29.9
39 S	8 E	WM	34	SE NE	2	20.5
39 S	8 E	WM	34	SE NE	6	11.5
39 S	8 E	WM	34	NE SE	3	1.2
39 S	8 E	WM	34	NE SE	5	23.1
39 S	8 E	WM	34	NW SE	12	3.5
39 S	8 E	WM	34	SE SE	4	11.2
39 S	8 E	WM	35	SW SW	1	0.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 LINDA A. KENYON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 179

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 30, 1990, GLORIA JEANNE DAFFARA timely submitted a Statement and Proof of Claim (Claim 179) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 179 was submitted for up to 38 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.0 acres with a season of use "April 1st thru October 31st." The claimed priority date is 1873.

3. Item 4 of the Statement and Proof of Claim includes the statement: "Land was purchased for farming Oct 26, 1872 with continuous use of farmland and irrigation ever since." (Claim # 179, Page 001).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit B," a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 179, Page 007).

5. Item 13 of the Statement and Proof of Claim incorporates "Exhibit F," a statement signed by Esther Kerns Johnston which states in pertinent part, "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 179, Page14).

6. GLORIA JEANNE DAFFARA signed the Statement and Proof of Claim for Claim 179 attesting that the information contained in the claim is true.

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 179 (*See* Claim 179, WIP Pages 00018 and 00019).

8. The property appurtenant to Claim 179 was subsequently acquired by LINDA A. BREVERLY. *See* QUITCLAIM DEED, COUNTY OF KLAMATH, VOL. M97, PAGE 8969 (Mar. 17, 1997), (Claim # 179, Page 041).

9. On May 27, 1999, the Claimant supplemented information to Claim 179 by providing a signed statement, stating in pertinent part, "I also wish to point out that I acquired the property as Linda A. Breverly (Claimant), but am now remarried and my last name is Kenyon." (Claim # 179, Page 039).

10. On May 27, 1999, the Claimant supplemented information to Claim 179 which included "a map which shows the location of the property in Riverside Addition." According to the map, the property appurtenant to Claim 179 is within County of Klamath Tax Lot 2600, and is 0.80 acres.

11. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres than claimed and a longer season of use than claimed.

12. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3169 to the Claim and/or Preliminary Evaluation of Claim 179.

13. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 28.

14. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3169. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).

15. On February 13, 2002, Contest 3169 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

16. Based on the sworn statements in Claim 179, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

b. The Claimant created a diversion, where necessary, to divert water from its natural source.

c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 179 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 179

CLAIM MAP REFERENCE: CLAIM # 179, PAGE 40

CLAIMANT: LINDA A KENYON
11765 SW TIMBERLINE CT
BEAVERTON OR 97008

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE: IRRIGATION OF 0.80 ACRE WITHIN TAX LOT 2600.

RATE OF USE:
0.02 CUBIC FOOT PER SECOND, 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 4 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
39 S	8 E	WM	31	NE SW	2600	0.8
39 S	8 E	WM	31	SE SW		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 BROOKE ANNE ESTENSON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 180

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, BROOKE ANNE ESTENSON (Claimant) timely submitted a Statement and Proof of Claim (Claim 180) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 180 was submitted for 96 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.0 acre with a season of use "April – September." The claimed priority date is 1873.

3. Item 4 of the Statement and Proof of Claim includes the statement, "Land was purchased for farming October 26, 1872 with continuous use of farm land and irrigation ever since." (Claim # 180, Page 001).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit A," a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 180, Page 006).

5. Item 13 of the Statement and Proof of Claim incorporates "Exhibit D," a statement signed by Esther Kerns Johnston which states in pertinent part, "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 180, Page 12)

6. JOAN PELLETIER as an agent of BROOKE ANNE ESTENSON signed the Statement and Proof of Claim for Claim 180 attesting that the information contained in the claim is true.

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 180 (Claim 180, WIP Pages 00012 and 00013).

8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres than claimed and for a longer season of use than claimed.

9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3170 to the Claim and/or Preliminary Evaluation of Claim 180.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 29.

11. On January 7, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3170. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 7, 2002).

12. On February 13, 2002, Contest 3170 was dismissed from the Office of Administrative (Feb. 13, 2002).

13. Based on the sworn statements in Claim 180, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

14. Based on the OWRD Investigation Map (T 39 S, R 8 E, Insert C), 1.0 acre is irrigated within Lots 3, 4 and 5 in Block 1 of the Riverside Addition to Keno. Because Lots 3, 4 and 5 appear to be identical in size, OWRD finds 0.7 acre irrigated in Lots 3 and 4.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 180 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 180

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANT: BROOKE ANNE ESTENSON
13027 HALWIN CIRCLE
DALLAS, TX 75243

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:

IRRIGATION OF 0.7 ACRE WITHIN LOTS 3 AND 4 IN BLOCK 1 OF RIVERSIDE ADDITION TO KENO.

RATE OF USE:

0.02 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 7 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	NE SW	2900	0.7	Lots 3 and 4 in Block 1 of Riverside Addition to Keno
39 S	8 E	WM	31	NW SW			

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 WILLIAM BOEHME AND MERNICE BOEHME	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 181

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, GARY FRAZIER AND PATRICIA FRAZIER timely submitted a Statement and Proof of Claim (Claim 181) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 181 was submitted for 45-60 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 0.5 acres with a season of use "May – Oct." The claimed priority date is 1878.

3. Item 4 of the Statement and Proof of Claim includes the statement, "Past history of use – Purch. for farming Oct 26, 1872 with continuous use since." (Claim # 181, Page 001).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit A," a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 181, Page 018).

5. Item 13 of the Statement and Proof of Claim incorporates "Exhibit D," a statement signed by Esther Kerns Johnston which states in pertinent part: "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 181, Page 009)

6. GARY FRAZIER AND PATRICIA FRAZIER signed the Statement and Proof of Claim for Claim 181 attesting that the information contained in the claim is true.

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 181 (Claim 181, WIP Pages 00014 and 00015).

8. On August 31, 1992, the title to the property associated with Claim 181 was transferred to WILLIAM BOEHME AND MERNICE BOEHME (Claimants) from GARY A. FRAZIER AND PATRICIA J. FRAZIER. *See* COUNTY OF KLAMATH RECORDS, VOL. M92, PAGE 20184 (Claim # 181, Pages 032 - 034).

9. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres than claimed and a longer season of use than claimed.

10. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3171 to the Claim and/or Preliminary Evaluation of Claim 181.

11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 30.

12. On January 7, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3171. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 7, 2002).

13. On February 13, 2002, Contest 3171 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

14. Based on the sworn statements in Claim 181, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

15. Based on the OWRD Investigation Map (T 39 S, R 8 E, Insert C), OWRD finds 0.2 acre is irrigated within Lot 2 in Block 1 of the Riverside Addition to Keno.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 181 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 181

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANT: WILLIAM BOEHME
MERNICE BOEHME
PO BOX 462
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:
IRRIGATION OF 0.2 ACRE WITHIN LOT 2 IN BLOCK 1 OF RIVERSIDE ADDITION TO KENO.

RATE OF USE:
0.01 CUBIC FOOT PER SECOND 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1878

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 5 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	NE SW	3000	0.2	Lot 2 in Block 1of Riverside Addition to Keno
39 S	8 E	WM	31	SE SW			

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 LEWIS E. FURBER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 182

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 182 (Claimant: LEWIS E. FURBER) and its associated contests (3172, 3404, 3834, 4176) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Consolidated Cases 124, 126, and 127[1].

2. The Office of Administrative Hearings (OAH) conducted contested case proceedings and issued a PROPOSED ORDER (Proposed Order) for Claims 177, 182, and 183 on July 22, 2004.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States, the Klamath Tribes, and Claimants. Responses to exceptions were timely filed by the United States and Claimants.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 177, 182, and 183, and are found to be persuasive in part; therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8, and A.9, below.

5. The evidentiary record for Claims 177, 182 and 183 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 182.

[1] [1] Claim 177 (Case 124), Claim 182 (Case 126), and Claim 183 (Case 18) were consolidated by Order for hearing. (*See* ORDER GRANTING MOTION TO RESET AND MOTION TO CONSOLIDATE, June 21, 2002.)

6. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues Presented" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Sections A.7, below.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.9, below.
   g. The "The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 182. Consistent with Sections A.7, A.8 and A.9, below, the outcome of the Order has been modified to restrict the recognized purposes of use to irrigation and livestock, and to identify the appropriate priority dates as August 16, 1879 and December 31, 1899.

7. **Findings of Facts.** The Proposed Order's "Findings of Fact" section is modified as shown below. Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

   a. Modified Proposed Order Finding of Fact 10

   10. From the time title was acquired to the properties by their first record holders other than the United States, until the flow of the Klamath River came under control through construction of dams, after 1909, the properties were subjected to ~~irrigation by~~ natural overflow from the Klamath River on a seasonal basis~~, and were used for grazing and hay~~. (Ex. 124E00002002 at 17-32.) The claimed lands not included within the Miller Swamp Land Deed were beneficially used for haying and grazing no later than December 31, 1899. *Id.* In the early years of the 20th century, berms and ditches were constructed to control the flow of water on the property. (Ex 124E00002002 at 26, 31.) After the Klamath River was controlled, the properties were irrigated through a series of ditches, drawing water directly from the Klamath River. (Ex. 124E00007006 at 18.)

   Reasons for Modifications: The deleted text is not supported by a preponderance of evidence in the record. The additional text reflects earliest date by which a preponderance of evidence supports beneficial use of water on lands not included within the Miller Swamp Land Deed.

8. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 19, and 20 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   (1) There is sufficient evidence to support a portion of the right claimed.

(2) The record supports the rate, duty, ~~actual use,~~ points of diversion and acreage as allowed in the Preliminary Evaluations.

(3) The record establishes use of water for irrigation and livestock. ~~as claimed.~~

(5) The claimed use of water prior to February 24, 1909 for wildlife habitat is not supported by a preponderance of the evidence in the record. ~~is not wasteful.~~

(6) ~~Claimants have not changed the use of water from irrigation to wildlife without complying with Oregon Statutory procedures for securing a change in use.~~ To the extent that water is held in ponds on the property solely for use by wildlife, this constitutes an impermissible change in use as a result of injury to other water users.

(7) Claimants are using the water for the claimed irrigation and livestock uses.

(8) Claimants' use of water for irrigation and livestock is not detrimental to contestants' water rights.

(11) The claimed uses for irrigation and livestock were ~~was~~ developed within a reasonable time of the established date of appropriation. Under the facts in this case, beneficial use of natural overflow was sufficient to establish a vested right for irrigation and livestock purposes without the construction of irrigation works. ~~The record establishes the completion of works within a reasonable time after beginning construction or use of water.~~

(13) The claimed right for wildlife habitat is denied. It is therefore unnecessary to reach the issue of the use's consistency with the Klamath River Basin Compact. ~~has not been shown to have violated the Klamath River Basin Compact.~~

(14) The claimed right for wildlife habitat is denied. It is therefore unnecessary to reach the issue of whether the rights for wildlife habitat are subordinate to domestic and irrigation use pursuant to the Klamath River Basin Compact. ~~The evidence is sufficient to establish the relative priorities of rights for wildlife habitat and domestic and irrigation rights pursuant to the Klamath River Basin Compact.~~

(15) There is sufficient information on the development of water on this place of use prior to February 24, 1909, to establish a vested pre-1909 water right for irrigation and livestock uses.

(16) Natural flooding/~~subirrigation~~/natural overflow may form the basis for ~~gives rise to~~ a valid water right.

(19) An intent as of the established priority date to divert water or make beneficial use of natural overflow for wildlife has not been demonstrated.

(20) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of

regulation of water use by the OWRD Watermaster. ~~The waters from Four Mile Lake and Fish Lake, together with the flood, storm, springs, new, developed, discovered, salvaged, excess, reclaimed, surplus and captured waters thereof and their tributary including all water which may drain or flow into Cascade Canal connecting Four Mile Lake and Fish Lake may be "water available" for appropriation under the Klamath Adjudication.~~

Reason for Modifications: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the record, as described in the modified opinion section, below, supports conclusions other than those in the Proposed Order.

9. **Opinion.** The "Opinion" section of the Proposed Order has been replaced in its entirety with the following:

The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

1. Evidence of beneficial use

The Claimants have submitted Swamp Land Deeds covering most of the claimed place of use. The effect of these deeds depends on the circumstances in which they were issued. The Swamp Land Act of 1870 ("1870 Act") required proof of reclamation in order to obtain a deed. The definition of "reclamation" provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of $1 per acre. The Swamp Land Act of 1878 ("1878 Act") altered some of the provisions of the 1870 Act. An applicant under the 1870 Act could, under the terms of the 1878 Act, obtain a deed without proof of reclamation by payment of $2.50 per acre. (Section 10, p46). Otherwise, an applicant under the 1870 Act would still need to submit proof of reclamation. An applicant making an application under the terms of the 1878 Act (i.e., making an initial application after the effective date of the 1878 Act) could obtain a deed by payment of a minimum of $1 per acre without proof of reclamation. (Section 4, 42). Applications under the terms of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 ("1887 Act") made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been "reclaimed or paid" by the effective date of the 1887 Act, with the exception that such applicants who were also "actual settlers on lands of 320 acres or less" and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. Deeds issued under this provision were limited to 640 acres. Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the

1878 Act (i.e., without requiring proof of reclamation). The 1887 Act went into effect on February 16, 1887.

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.[2]

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than $2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for $2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the Swamp Land Deeds in this case, the deed issued to Miller in 1882 constitutes proof of beneficial use for irrigation, because the deed was issued for 2,194.61 acres on payment of $1 per acre. (124E00007006, Ex 4 and 5.) In addition, the minutes of the land board state that Miller submitted proof of reclamation. (*Id.*) This deed was issued on August 16, 1882. Because swamp lands were required to have been reclaimed for three years prior to issuance of a deed, the priority date for the portion of the claimed place of use covered by this deed is August 16, 1879.

The remaining deeds are not sufficient proof of beneficial use for irrigation. The Small and Logan deeds were issued after the effective date of the 1887 Act. The Callaghan deed was issued in 1886, but was issued for payment of $320 for the NW¼ of Section 36. The NW¼ is less than 320 acres, and there is no additional proof of reclamation accompanying the deed. While it is possible that beneficial use on this land was made prior to the issuance of the deed, the burden of proof lies with the Claimants.

Although there is evidence supporting use on the claimed land as early as 1858, the evidence does not support application for transfer of these lands into private ownership

[2] The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

during this period. While it is not always necessary for the owner of the land and the appropriator of the water to be the same in order to perfect a water right, there is no support for the position that private citizens could appropriate water for the benefit of swamp lands owned by the State before an application was filed for the lands under the Swamp Land Acts.

Other evidence of beneficial use on the claimed land is centered around the turn of the 19th century. Four separate witnesses provided affidavits in support of beneficial use on the claimed property during this time period. First, Frank Anderson states that an area including the claimed lands was irrigated and controlled by dikes and other water control "prior to the turn of the century." (OWRD Ex 1 at 31.) Second, Julian Ager states: "My father, in different years, harvested hay from across the river on Miller Island in Sections 35 and 36 and hauled his hay across on a barge which he built." (OWRD Ex 1 at 17.) Ager's mother is the daughter of OA Stearns, who owned land across the river from Miller Island. Ager's mother married Ager's father in 1900 "and having secured 120 acres from her father they built their home in which I was born." (*Id.*) It is possible that Ager's father's harvesting of hay from the claimed place of use occurred as early as 1900. Third, Winston Patterson states that his father, Clyde Patterson, put up hay on the Furber place, and that it was farmed and ranched since prior to the turn of the century. (*Id.* at 26.) Finally, Barney Hooper makes the following statement concerning a conversation he had with "Mr. Jess Johnson": "Mr. Jess Johnson knew that in the late 1800s they put up meadow hay and ran cows on all the ground on Miller Island, including the ground presently owned by the Furber family, including Ruth Anderson." (*Id.* at 23.)

All of these statements are hearsay. However, the consistency of the statements increases their reliability. Based on the combined weight of these statements, it is more likely than not that haying and grazing was occurring on the claimed land prior to 1909. Each of the statements places water use around the turn of the century, but none of the statements is precise. Without the evidence to more accurately fix a date for beneficial use, the most appropriate priority date for the claimed lands not covered by the Miller Swamp Land Deed is December 31, 1899.

2. Purposes of Use

The claimed purposes of use of water are irrigation, livestock, and wildlife. As described above, the claimed place of use was beneficially used for irrigation and livestock prior to 1909. There is insufficient evidence of intent to establish a separate wildlife use prior to 1909. The only evidence is that waterfowl landed on standing water on the property, and that some incidental hunting may have occurred.[3] This is insufficient to constitute an intentional development of a beneficial use for wildlife purposes. In addition, there is no evidence that use or practices with respect to wildlife have changed significantly since 1909. The claimed wildlife use is denied.

[3] Evidence of use of the land for hunting by members of the Klamath Tribes prior to private ownership of the land or a private claim on the land (such as a Swamp Land Act application) would be relevant only to a determination of rights arising from the Klamath Treaty of 1864, and not to the type of water right claimed here.

3. Place of Use

The places of use for each of the claims are listed in the Water Right Claim Description, below. Any parts of the places of use within Government Lots 2 through 9 in Section 35, Township 39 South, Range 8 East, W.M., are entitled to a priority date of August 16, 1879, as described above. The remaining parts of the places of use are entitled to a priority date of December 31, 1899.

4. Duty

No specific duty was claimed for Claims 177, 182, and 183. In the absence of evidence to the contrary the Adjudicator's standard duty of 3.5 acre-feet per acre for irrigation, as described in Appendix A to the Preliminary Evaluation, is applicable to rights recognized for these claims. (OWRD Ex. 1 at 471-73.)

5. Rate

Each of Claims 177, 182 and 183 claimed a rate of 31 cfs for irrigation (broken out into 8 cfs from POD # 1[4] and 23 cfs from POD #2), 1 cfs for livestock water, and 3 cfs for wildlife. (OWRD Ex. 1 at 3, 154, 311.) Although not clear from the claim documents, it is evident from later filings and testimony that these rates are intended to apply to the combined total of the places of use claimed in Claims 177, 182, and 183.

Both OWRD's Preliminary Evaluation and the Proposed Order found this rate to be excessive, and allowed a rate based on the Adjudicator's standard rate of 1/40th cfs/acre multiplied by the number of acres claimed.[5]

The testimony in support of the rates claimed states that the higher rate enables irrigation water to be applied more quickly. (Hearing Transcript at 172.) There is insufficient evidence, however, that this irrigation practice (which constitutes diversion at more than double the Adjudicator's standard rate) is necessary to accomplish the intended beneficial use. The irrigation rates determined in the Proposed Order and the Preliminary Evaluation for these claims are appropriate. The rates are as follows:

Claim 177:

POD 1: 0.78 cfs for irrigation of 31.2 acres;
POD 2: 4.11 cfs for irrigation of 164.2 acres;
4800 gallons per day for 400 head

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[4] Claim 183 claimed 7.6 cfs for irrigation from POD # 1, instead of 8 cfs.

[5] The Proposed Order concluded that the Claimants were limited to the rates listed in the Preliminary Evaluation because the Claimants did not file a contest to the Preliminary Evaluation. The Proposed Order's reasoning is in error. A claimant's burden in a contested case hearing in an adjudication under ORS Chapter 539 is to prove the claim elements. A claimant is not required to contest OWRD's Preliminary Evaluation in order to preserve the ability to meet that burden. The Preliminary Evaluation was OWRD's analysis of adjudication claims based on the evidence available to OWRD at the time. It does not prevent a claimant from presenting further evidence in support of the Claimants' claim during the contested case proceeding.

Claim 182:

POD 1: 1.78 cfs for irrigation of 71.2 acres
POD 2: 2.98 cfs for irrigation of 119.3 acres
4800 gallons per day for 400 head

Claim 183:

POD 1: 0.83 cfs for irrigation of 33.2 acres
POD 2: 2.81 cfs for irrigation of 112.6 acres
POD 1 & POD 2 - COMINGLED WATER: 34.3 acres
4800 gallons per day for 400 head

6. Season of Use

Claimants contend that the period of use for irrigation is year round. Each of the claims divided the irrigation season into two parts: "April 1 – October 31" and "winter for pre-crop irrigation." (OWRD Ex. 1 at 6, 172, 317.) The evidence does not support a year-round season for irrigation. Instead, prior to 1909, the land would begin flooding "in the early spring depending upon the snowpack and weather" and that "usually by June or July the water began to recede." (OWRD Ex. 1 at 34.) In addition, the evidence does not support the contention that the application of water during the winter provides any benefit to crop growth that could not be accomplished through application of water during a more typical irrigation season. The April 1 through October 31 irrigation season recognized in the Proposed Order is supported by the evidence, and is incorporated herein.

7. Abandonment

"Abandonment" is a question of fact, requiring evidence of an intentional forsaking or desertion, as well as a failure to use the water. *In re Willow Creek*, 74 OR 592 (1914); *Wimer v. Simmons*, 27 Or 1, 12 (1895). A sufficiently long period of non-use can, depending on the circumstances, constitute evidence of an intent to abandon. *See, e.g., In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996).

In this case, there was a considerable period of non-use after the Keno Dam was built in the 1930s. It cannot be said, however, that the water right was "abandoned" for non-use, since there is no evidence of such an intention. To the contrary, the flooding of the property as a result of the dam was the cause of extensive discussion, and, eventually the threat of litigation against COPCO, the dam owner, that resulted in construction of a dike to protect the property from flooding. Under these circumstances, the period of non-use does not constitute evidence of an intent to abandon the water right.

8. Over-appropriation / Interference with the Klamath Reclamation Project

No substantial evidence was presented on these issues. In addition, in the context of this adjudication, the question of "over-appropriation," or water shortage, is properly addressed as a matter of regulation by the watermaster according to the doctrine of prior appropriation. It will not be addressed here.

Reasons for Modifications: To apply the correct legal standards with respect to the effect of Swamp Land Deeds and the effect of a failure to contest the Adjudicator's Preliminary Evaluation to the findings of fact; to determine the appropriate priority dates, diversion rates, season of use, and purposes of use based on the evidence in the record; to make various clarifications with respect to the legal reasoning supporting the conclusions of law.

10. OWRD finds that Point of Diversion #2 for Claim 182 is incorrectly listed on the Preliminary Evaluation as being in the SW¼ NW¼, Section 35, township 39 South, Range 8 East, W.M. The correct location of this point of diversion is Government Lot 2, SW¼ SW¼, Section 35, township 39 South, Range 8 East, W.M (Compare OWRD Ex. 1 at 156, 157,230, 238 241, 243, and 244.)

B. DETERMINATION

1. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:

   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in it is entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.9, above.
   g. The "The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 182. Consistent with Sections A.7, A.8 and A.9, above, the outcome of the Order has been modified to restrict the recognized purposes of use to irrigation and livestock, and to identify the appropriate priority dates as August 16, 1879 and December 31, 1899.

2. The elements of a pre-1909 claim are established with respect to irrigation and livestock uses. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 182 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 182

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E

CLAIMANT: LEWIS E. FURBER
2000 MILLER ISLAND RD W
KLAMATH FALLS OR 97603

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 190.5 ACRES AND LIVESTOCK WATERING OF 400 HEAD

RATE OF USE:
4.7674 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

4.76 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, BEING 1.78 CFS FROM POD 1 AND 2.98 CFS FROM POD 2, AND

0.0074 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 4800 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - October 31
Livestock	January 1 - December 31

DATES OF PRIORITY:
AUGUST 16, 1879: IRRIGATION OF 38.7 ACRES (AS LISTED BELOW) FOR A TOTAL OF 0.97 CFS OF WATER AND LIVESTOCK WATERING

DECEMBER 31, 1899: IRRIGATION OF 151.8 ACRES (AS LISTED BELOW) FOR A TOTAL OF 3.79 CFS OF WATER AND LIVESTOCK WATERING

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	39 S	8 E	WM	35	SE SW	2
POD 2	39 S	8 E	WM	35	SW SW	2

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	35	NE SW	7	3.6	POD 2	AUGUST 16, 1879
39 S	8 E	WM	35	NW SW	3	3.7		
39 S	8 E	WM	35	SW SW	2	11.6		
39 S	8 E	WM	35	SE SW	2	19.8		
39 S	8 E	WM	35	NE SW	14	3.8	POD 2	DECEMBER 31, 1899
39 S	8 E	WM	35	SE SW	15	15.6		
39 S	8 E	WM	35	NE SE	10	3.6		
39 S	8 E	WM	35	NW SE		7.6		
39 S	8 E	WM	35	SW SE	10	35.1		
39 S	8 E	WM	35	SE SE		14.9		
39 S	8 E	WM	35	NE SE	10	4.8	POD 1	
39 S	8 E	WM	35	SE SE		19.9		
39 S	8 E	WM	36	NW SW	10	10.2		
39 S	8 E	WM	36	SW SW		36.3		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 SIDNEY E. VIDRICKSEN; RUSSELL E. GMIRKIN; AND VASIA (TOM) GMIRKIN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 183

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 183 (Claimants: SIDNEY E. VIDRICKSEN, RUSSELL E. GMIRKIN, AND VASIA (TOM) GMIRKIN) and its associated contests (3173, 3405, 3835, 4177) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Consolidated Cases 124, 126, and 127[1].

2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER (Proposed Order) for Claims 177, 182, and 183 on July 22, 2004.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States, the Klamath Tribes, and Claimants. Responses to exceptions were timely filed by the United States and Claimants.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 177, 182, and 183, and are found to be persuasive in part; therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8, and A.9, below.

5. The evidentiary record for Claims 177, 182 and 183 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the

[1] [1] Claim 177 (Case 124), Claim 182 (Case 126), and Claim 183 (Case 18) were consolidated by Order for hearing. (*See* ORDER GRANTING MOTION TO RESET AND MOTION TO CONSOLIDATE, June 21, 2002.)

sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 183.

6. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues Presented" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Sections A.7, below.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.9, below.
   g. The "The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 183. Consistent with Sections A.7, A.8 and A.9, below, the outcome of the Order has been modified to restrict the recognized purposes of use to irrigation and livestock, and to identify the appropriate priority dates as August 16, 1879 and December 31, 1899.

7. **Findings of Facts.** The Proposed Order's "Findings of Fact" section is modified as shown below. Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

   a. Modified Proposed Order Finding of Fact 10

   10. From the time title was acquired to the properties by their first record holders other than the United States, until the flow of the Klamath River came under control through construction of dams, after 1909, the properties were subjected to ~~irrigation by~~ natural overflow from the Klamath River on a seasonal basis~~, and were used for grazing and hay~~. (Ex. 124E00002002 at 17-32.) The claimed lands not included within the Miller Swamp Land Deed were beneficially used for haying and grazing no later than December 31, 1899. *Id.* In the early years of the 20th century, berms and ditches were constructed to control the flow of water on the property. (Ex 124E00002002 at 26, 31.) After the Klamath River was controlled, the properties were irrigated through a series of ditches, drawing water directly from the Klamath River. (Ex. 124E00007006 at 18.)

Reasons for Modifications: The deleted text is not supported by a preponderance of evidence in the record. The additional text reflects earliest date by which a preponderance of evidence supports beneficial use of water on lands not included within the Miller Swamp Land Deed.

8. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 19, and 20 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

(1) There is sufficient evidence to support a portion of the right claimed.

(2) The record supports the rate, duty, ~~actual use,~~ points of diversion and acreage as allowed in the Preliminary Evaluations.

(3) The record establishes use of water for irrigation and livestock. ~~as claimed.~~

(5) The claimed use of water prior to February 24, 1909 for wildlife habitat is not supported by a preponderance of the evidence in the record. ~~is not wasteful.~~

(6) ~~Claimants have not changed the use of water from irrigation to wildlife without complying with Oregon Statutory procedures for securing a change in use.~~ To the extent that water is held in ponds on the property solely for use by wildlife, this constitutes an impermissible change in use as a result of injury to other water users.

(7) Claimants are using the water for the claimed irrigation and livestock uses.

(8) Claimants' use of water for irrigation and livestock is not detrimental to contestants' water rights.

(11) The claimed uses for irrigation and livestock were ~~was~~ developed within a reasonable time of the established date of appropriation. Under the facts in this case, beneficial use of natural overflow was sufficient to establish a vested right for irrigation and livestock purposes without the construction of irrigation works. ~~The record establishes the completion of works within a reasonable time after beginning construction or use of water.~~

(13) The claimed right for wildlife habitat is denied. It is therefore unnecessary to reach the issue of the use's consistency with the Klamath River Basin Compact. ~~has not been shown to have violated the Klamath River Basin Compact.~~

(14) The claimed right for wildlife habitat is denied. It is therefore unnecessary to reach the issue of whether the rights for wildlife habitat are subordinate to domestic and irrigation use pursuant to the Klamath River Basin Compact. ~~The evidence is sufficient to establish the relative priorities of rights for wildlife habitat and domestic and irrigation rights pursuant to the Klamath River Basin Compact.~~

(15) There is sufficient information on the development of water on this place of use prior to February 24, 1909, to establish a vested pre-1909 water right for irrigation and livestock uses.

(16) Natural flooding/~~subirrigation~~/natural overflow may form the basis for ~~gives rise to~~ a valid water right.

(19) An intent as of the established priority date to divert water or make beneficial use of natural overflow for wildlife has not been demonstrated.

(20) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of regulation of water use by the OWRD Watermaster. ~~The waters from Four Mile Lake and Fish Lake, together with the flood, storm, springs, new, developed, discovered, salvaged, excess, reclaimed, surplus and captured waters thereof and their tributary including all water which may drain or flow into Cascade Canal connecting Four Mile Lake and Fish Lake may be "water available" for appropriation under the Klamath Adjudication.~~

Reason for Modifications: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the

record, as described in the modified opinion section, below, supports conclusions other than those in the Proposed Order.

9. **Opinion.** The "Opinion" section of the Proposed Order has been replaced in its entirety with the following:

The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

1. Evidence of beneficial use

The Claimants have submitted Swamp Land Deeds covering most of the claimed place of use. The effect of these deeds depends on the circumstances in which they were issued. The Swamp Land Act of 1870 ("1870 Act") required proof of reclamation in order to obtain a deed. The definition of "reclamation" provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of $1 per acre. The Swamp Land Act of 1878 ("1878 Act") altered some of the provisions of the 1870 Act. An applicant under the 1870 Act could, under the terms of the 1878 Act, obtain a deed without proof of reclamation by payment of $2.50 per acre. (Section 10, p46). Otherwise, an applicant under the 1870 Act would still need to submit proof of reclamation. An applicant making an application under the terms of the 1878 Act (i.e., making an initial application after the effective date of the 1878 Act) could obtain a deed by payment of a minimum of $1 per acre without proof of reclamation. (Section 4, 42). Applications under the terms of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 ("1887 Act") made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been "reclaimed or paid" by the effective date of the 1887 Act, with the exception that such applicants who were also "actual settlers on lands of 320 acres or less" and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. Deeds issued under this provision were limited to 640 acres. Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the 1878 Act (i.e., without requiring proof of reclamation). The 1887 Act went into effect on February 16, 1887.

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of

the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.[2]

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than $2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for $2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the Swamp Land Deeds in this case, the deed issued to Miller in 1882 constitutes proof of beneficial use for irrigation, because the deed was issued for 2,194.61 acres on payment of $1 per acre. (124E00007006, Ex 4 and 5.) In addition, the minutes of the land board state that Miller submitted proof of reclamation. (*Id.*) This deed was issued on August 16, 1882. Because swamp lands were required to have been reclaimed for three years prior to issuance of a deed, the priority date for the portion of the claimed place of use covered by this deed is August 16, 1879.

The remaining deeds are not sufficient proof of beneficial use for irrigation. The Small and Logan deeds were issued after the effective date of the 1887 Act. The Callaghan deed was issued in 1886, but was issued for payment of $320 for the NW¼ of Section 36. The NW¼ is less than 320 acres, and there is no additional proof of reclamation accompanying the deed. While it is possible that beneficial use on this land was made prior to the issuance of the deed, the burden of proof lies with the Claimants.

Although there is evidence supporting use on the claimed land as early as 1858, the evidence does not support application for transfer of these lands into private ownership during this period. While it is not always necessary for the owner of the land and the appropriator of the water to be the same in order to perfect a water right, there is no support for the position that private citizens could appropriate water for the benefit of swamp lands owned by the State before an application was filed for the lands under the Swamp Land Acts.

Other evidence of beneficial use on the claimed land is centered around the turn of the 19th century. Four separate witnesses provided affidavits in support of beneficial use

[2] The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

on the claimed property during this time period. First, Frank Anderson states that an area including the claimed lands was irrigated and controlled by dikes and other water control "prior to the turn of the century." (OWRD Ex 1 at 31.) Second, Julian Ager states: "My father, in different years, harvested hay from across the river on Miller Island in Sections 35 and 36 and hauled his hay across on a barge which he built." (OWRD Ex 1 at 17.) Ager's mother is the daughter of OA Stearns, who owned land across the river from Miller Island. Ager's mother married Ager's father in 1900 "and having secured 120 acres from her father they built their home in which I was born." (*Id.*) It is possible that Ager's father's harvesting of hay from the claimed place of use occurred as early as 1900. Third, Winston Patterson states that his father, Clyde Patterson, put up hay on the Furber place, and that it was farmed and ranched since prior to the turn of the century. (*Id.* at 26.) Finally, Barney Hooper makes the following statement concerning a conversation he had with "Mr. Jess Johnson": "Mr. Jess Johnson knew that in the late 1800s they put up meadow hay and ran cows on all the ground on Miller Island, including the ground presently owned by the Furber family, including Ruth Anderson." (*Id.* at 23.)

All of these statements are hearsay. However, the consistency of the statements increases their reliability. Based on the combined weight of these statements, it is more likely than not that haying and grazing was occurring on the claimed land prior to 1909. Each of the statements places water use around the turn of the century, but none of the statements is precise. Without the evidence to more accurately fix a date for beneficial use, the most appropriate priority date for the claimed lands not covered by the Miller Swamp Land Deed is December 31, 1899.

2. Purposes of Use

The claimed purposes of use of water are irrigation, livestock, and wildlife. As described above, the claimed place of use was beneficially used for irrigation and livestock prior to 1909. There is insufficient evidence of intent to establish a separate wildlife use prior to 1909. The only evidence is that waterfowl landed on standing water on the property, and that some incidental hunting may have occurred.[3] This is insufficient to constitute an intentional development of a beneficial use for wildlife purposes. In addition, there is no evidence that use or practices with respect to wildlife have changed significantly since 1909. The claimed wildlife use is denied.

3. Place of Use

The places of use for each of the claims are listed in the Water Right Claim Description, below. Any parts of the places of use within Government Lots 2 through 9 in Section 35, Township 39 South, Range 8 East, W.M., are entitled to a priority date of August 16, 1879, as described above. The remaining parts of the places of use are entitled to a priority date of December 31, 1899.

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[3] Evidence of use of the land for hunting by members of the Klamath Tribes prior to private ownership of the land or a private claim on the land (such as a Swamp Land Act application) would be relevant only to a determination of rights arising from the Klamath Treaty of 1864, and not to the type of water right claimed here.

4. Duty

No specific duty was claimed for Claims 177, 182, and 183. In the absence of evidence to the contrary the Adjudicator's standard duty of 3.5 acre-feet per acre for irrigation, as described in Appendix A to the Preliminary Evaluation, is applicable to rights recognized for these claims. (OWRD Ex. 1 at 471-73.)

5. Rate

Each of Claims 177, 182 and 183 claimed a rate of 31 cfs for irrigation (broken out into 8 cfs from POD # 1[4] and 23 cfs from POD #2), 1 cfs for livestock water, and 3 cfs for wildlife. (OWRD Ex. 1 at 3, 154, 311.) Although not clear from the claim documents, it is evident from later filings and testimony that these rates are intended to apply to the combined total of the places of use claimed in Claims 177, 182, and 183.

Both OWRD's Preliminary Evaluation and the Proposed Order found this rate to be excessive, and allowed a rate based on the Adjudicator's standard rate of 1/40th cfs/acre multiplied by the number of acres claimed.[5]

The testimony in support of the rates claimed states that the higher rate enables irrigation water to be applied more quickly. (Hearing Transcript at 172.) There is insufficient evidence, however, that this irrigation practice (which constitutes diversion at more than double the Adjudicator's standard rate) is necessary to accomplish the intended beneficial use. The irrigation rates determined in the Proposed Order and the Preliminary Evaluation for these claims are appropriate. The rates are as follows:

Claim 177:

POD 1: 0.78 cfs for irrigation of 31.2 acres;
POD 2: 4.11 cfs for irrigation of 164.2 acres;
4800 gallons per day for 400 head

Claim 182:

POD 1: 1.78 cfs for irrigation of 71.2 acres
POD 2: 2.98 cfs for irrigation of 119.3 acres
4800 gallons per day for 400 head

[4] Claim 183 claimed 7.6 cfs for irrigation from POD # 1, instead of 8 cfs.

[5] The Proposed Order concluded that the Claimants were limited to the rates listed in the Preliminary Evaluation because the Claimants did not file a contest to the Preliminary Evaluation. The Proposed Order's reasoning is in error. A claimant's burden in a contested case hearing in an adjudication under ORS Chapter 539 is to prove the claim elements. A claimant is not required to contest OWRD's Preliminary Evaluation in order to preserve the ability to meet that burden. The Preliminary Evaluation was OWRD's analysis of adjudication claims based on the evidence available to OWRD at the time. It does not prevent a claimant from presenting further evidence in support of the Claimants' claim during the contested case proceeding.

Claim 183:

POD 1: 0.83 cfs for irrigation of 33.2 acres
POD 2: 2.81 cfs for irrigation of 112.6 acres
POD 1 & POD 2 - COMINGLED WATER: 34.3 acres
4800 gallons per day for 400 head

6. Season of Use

Claimants contend that the period of use for irrigation is year round. Each of the claims divided the irrigation season into two parts: "April 1 – October 31" and "winter for pre-crop irrigation." (OWRD Ex. 1 at 6, 172, 317.) The evidence does not support a year-round season for irrigation. Instead, prior to 1909, the land would begin flooding "in the early spring depending upon the snowpack and weather" and that "usually by June or July the water began to recede." (OWRD Ex. 1 at 34.) In addition, the evidence does not support the contention that the application of water during the winter provides any benefit to crop growth that could not be accomplished through application of water during a more typical irrigation season. The April 1 through October 31 irrigation season recognized in the Proposed Order is supported by the evidence, and is incorporated herein.

7. Abandonment

"Abandonment" is a question of fact, requiring evidence of an intentional forsaking or desertion, as well as a failure to use the water. *In re Willow Creek*, 74 OR 592 (1914); *Wimer v. Simmons*, 27 Or 1, 12 (1895). A sufficiently long period of non-use can, depending on the circumstances, constitute evidence of an intent to abandon. *See, e.g., In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996).

In this case, there was a considerable period of non-use after the Keno Dam was built in the 1930s. It cannot be said, however, that the water right was "abandoned" for non-use, since there is no evidence of such an intention. To the contrary, the flooding of the property as a result of the dam was the cause of extensive discussion, and, eventually the threat of litigation against COPCO, the dam owner, that resulted in construction of a dike to protect the property from flooding. Under these circumstances, the period of non-use does not constitute evidence of an intent to abandon the water right.

8. Over-appropriation / Interference with the Klamath Reclamation Project

No substantial evidence was presented on these issues. In addition, in the context of this adjudication, the question of "over-appropriation," or water shortage, is properly addressed as a matter of regulation by the watermaster according to the doctrine of prior appropriation. It will not be addressed here.

Reasons for Modifications: To apply the correct legal standards with respect to the effect of Swamp Land Deeds and the effect of a failure to contest the Adjudicator's Preliminary Evaluation to the findings of fact; to determine the appropriate priority dates, diversion rates, season of use, and purposes of use based on the evidence in the record; to make various clarifications with respect to the legal reasoning supporting the conclusions of law.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:

   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in it is entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.9, above.
   g. The "The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 183. Consistent with Sections A.7, A.8 and A.9, above, the outcome of the Order has been modified to restrict the recognized purposes of use to irrigation and livestock, and to identify the appropriate priority dates as August 16, 1879 and December 31, 1899.

2. The elements of a pre-1909 claim are established with respect to irrigation and livestock uses. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 183 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 183

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E

CLAIMANT: SYDNEY E. VIDRICKSEN
RUSSELL E. GMIRKIN
VASIA (TOM) GMIRKIN
5818 MARYLAND AVE
KLAMATH FALLS OR 97603

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 180.1 ACRES AND LIVESTOCK WATERING OF 400 HEAD

RATE OF USE:

4.5074 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

4.50 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, BEING 0.83 CFS FROM POD 1; 2.81 CFS FROM POD 2; 0.86 CFS COMINGLED WATER FROM POD 1 & POD 2; AND

0.0074 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 4800 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - October 31
Livestock	January 1 - December 31

DATES OF PRIORITY:

AUGUST 16, 1879: IRRIGATION OF 49.8 ACRES (AS LISTED BELOW) FOR A TOTAL OF 1.24 CFS OF WATER AND LIVESTOCK WATERING

DECEMBER 31, 1899: IRRIGATION OF 130.3 ACRES (AS LISTED BELOW) FOR A TOTAL OF 3.26 CFS OF WATER AND LIVESTOCK WATERING

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	39 S	8 E	WM	26	SW NE	6
POD 2	39 S	8 E	WM	35	SW NW	4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	35	NW NE	8	10.0	POD 1	AUGUST 16, 1879
39 S	8 E	WM	35	SE NE	9	6.0		
39 S	8 E	WM	35	NW NW	5	17.2	POD 2	
39 S	8 E	WM	35	NW NW	6	3.0		
39 S	8 E	WM	35	SW NW	4	13.6		
39 S	8 E	WM	35	NW NE	11	16.4	POD 1	DECEMBER 31, 1899
39 S	8 E	WM	35	SW NE		0.8		

IRRIGATION and LIVESTOCK WATERING								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	35	NW NE	11	9.8	POD 2	DECEMBER 31, 1899
39 S	8 E	WM	35	SW NE		0.3		
39 S	8 E	WM	35	NE NW		40.0		
39 S	8 E	WM	35	NW NW	12	10.0		
39 S	8 E	WM	35	SE NW	13	18.7		
39 S	8 E	WM	35	NW NE	11	4.0	POD 1 & POD 2 COMINGLED WATER	
39 S	8 E	WM	35	SW NE		22.6		
39 S	8 E	WM	35	SE NE	10	5.7		
39 S	8 E	WM	35	SE NW	13	2.0		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 SHARON L. PAPPAS	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 184

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 October 22, 1990, ESTHER KERNS JOHNSTON timely submitted a Statement and Proof of Claim (Claim 184) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 184 was submitted for 28.8 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 0.3 acres with a season of use "May – Oct." The claimed priority date is 1873.

3. Item 4 of the Statement and Proof of Claim includes the statement: "Land was purchased for farming Oct 26, 1872 with continuous use of land and irrigation ever since." (Claim # 184, Page 01).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit D," a statement signed by Esther Kerns Johnston which states in pertinent part: "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 184, Page 010).

5. ESTHER KERNS JOHNSTON signed the Statement and Proof of Claim for Claim 184 attesting that the information contained in the claim is true.

6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 184 (Claim 184, WIP Pages 00011-00012).

7. On May 23, 1996, the title to the property associated with Claim 184 was transferred to SHARON LYNN PAPPAS (Claimant). *See* DEED, COUNTY OF KLAMATH, VOL. M96, PAGE 15264 (Claim # 184, Pages 030).

8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than claimed and a longer season of use than claimed.

9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3174 to the Claim and/or Preliminary Evaluation of Claim 184.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 31.

11. On January 7, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3174. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 7, 2002).

12. On April 29, 2002, Contest 3174 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Apr. 29, 2002).

13. Based on the sworn statements in Claim 184, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

14. OWRD finds the priority date to be 1873 as claimed.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 184 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 184

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANT: SHARON L. PAPPAS
70 THROCKMORTON
MILL VALLEY, OR 94941

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:

IRRIGATION OF 0.3 ACRE WITHIN LOTS 1 AND 2 IN BLOCK 2 OF RIVERSIDE ADDITION TO KENO.

RATE OF USE:

0.01 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 4 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	SE SW	3200	0.3	Lots 1 and 2 in Block 2 of Riverside Addition to Keno

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KENO IRRIGATION DISTRICT	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 185

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 185 (Claimant: KENO IRRIGATION DISTRICT) and its associated contests (2728, 2853, 3175, 3406, 3836, and 4178) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 128.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 185 on April 5, 2005.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States of America.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 185. Except for limiting the acreage to the 3599.7 acres originally claimed, which is addressed in Sections A.6 through A.10, below, the exceptions filed to the Proposed Order for Claim 185 are found to be unpersuasive.

5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted with modifications, as set forth in Section A.6, below.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.7., below.
   c. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, below.

d. A new section titled "Conclusions of Law" is added to the Proposed Order as set forth in Section A.9, below.
e. The "Opinion" is adopted in its entirety.
f. The "Discussion" is adopted with modifications, as set forth in Section A.10, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 185. Consistent with Sections A.6 through A.10, below, the outcome of the Order has been modified to limit the claim to the approval of 3599.7 acres.

6. **History of the Case.** Within the section titled "History of the Case" of the Proposed Order, the first two paragraphs are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> On January 24, 1991, Keno Irrigation District, filed a claim for a pre-1909 water right. This claim is for a total of 3 acre-feet per acre from multiple points of diversion located on Klamath River, tributary to Pacific Ocean, for irrigation of ~~3,614.2~~ 3599.7 acres ~~and~~ with incidental livestock use for 3500 head of cattle and 100 horses. The claimed period of use is January 1 through December 31. The claimed priority date is December, 1858.
>
> On October 4, 1999, the Adjudicator, Richard D. Bailey, issued a preliminary evaluation (P.E.) of the claim, recommending a partial granting of that claim at the following totals: irrigation use of ~~3,889.16~~ 3618.5 acres, with 90.47 cfs, or 10,855.5 acre-feet measured at the various points of diversion, a duty of ~~3.5~~ 3.0 acre-feet per acre and a season of use of March 1 - October 31 with a priority date of December 31, 1858.

Reason for Modifications: To make corrections raised in exceptions, to correct scrivener's errors in the Proposed Order, and to provide more specific information with reference to what was claimed, using evidence on the record.

7. **Evidentiary Rulings.**

a. *Within the section titled "Evidentiary Rulings" of the Proposed Order, the following text, beginning with the first sentence of the first paragraph and ending with the phrase "No objection to pages 5 and 7 of exhibit K were made," is stricken and replaced (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

> ~~Before the scheduled hearing the participants identified certain documents as evidence: a copy of OWRD's claim (OWRD exhibit 1); Keno Irrigation~~

~~District, in a Motion dated September 9, 2003, Claimant identified OWRD and the following exhibits they offer as exhibits:~~

~~Pages in 7002 are duplicative~~

~~7001 exhibit J and pages 5&7 of exhibit K~~

~~Objections to exhibit J were sustained as irrelevant~~

~~No objection to pages 5 and 7 of exhibit K were made~~

Prior to the hearing, OWRD offered its claim file (OWRD Exhibit 1) as evidence. OWRD Exhibit 1 is admitted.

Claimant Keno Irrigation District offered the following exhibits as evidence:

128E000070001

128E000070002

At the hearing, Claimant withdrew 128E000070001 as duplicative of other, admitted evidence, with the exception of Exhibit J and Pages 5 and 7 of Exhibit K (both of which were contained within 128E000070001). Exhibit J is excluded as irrelevant. Pages 5 and 7 of Exhibit K are admitted.

At the hearing, Claimant withdrew 128E000070002 as duplicative of other, admitted evidence.

In addition, Claimant offered the following exhibits as evidence:

b. *In addition to the above modifications, the following modifications are made to the final paragraph of the "Evidentiary Rulings" section. This paragraph addresses the exhibits offered by Contestant the United States. Additions are shown in "underline" text):*

The United States identified:

128E00040001-128E00040004 – documents accompanying US response to Claimant's motion for ruling on Legal issues.

128E00040005-128E00040008 – Direct testimony and exhibits of Loring Gurney

128E00040009 – Fund for Reclamation of Arid Lands - (selected pages)

(128E00040010-128E00040011) – Rebuttal

128E00040010 – History of Oregon School Lands – (selected pages

128E00040011 – History of Klamath County Oregon – (selected pages)

128E00040012

No objections were stated to these exhibits. They are admitted to the record.

Reason for Modifications: To provide clarity as to exhibits admitted and excluded.

8. **Findings of Fact.**

a. Proposed Order Finding of Fact # 3 is modified as follows (additions are shown in "underline" text, and deletions are shown in "~~strikethrough~~" text):

3. Claimant's predecessor in interest, Benjamin S. Kerns, purchased the land that is now the claimed place of use for claim no. 185 in 1901. Exh. 128E00040012, Transcript of Proceedings (hereafter "Tr."), 46. In approximately 1905, the Kerns began to build a system of dikes along the Klamath River to facilitate the draining of the lands. Tr. 124.2. These dikes were completed around 1916 or 1917. Tr. 116 and 124. ~~The claimed place of use was not useable until the dikes were completed and the drainage system was in place.~~ Prior to construction of the dikes and drainage system, cattle, often belly-deep in water, were kept on the land. At one time even hogs were raised and fattened on the cattails. Exh. 128E00040012. However, the productivity of the land was limited by excess water. In fact, some of the claimed place of use was still "sort of useless" in the 1950s. Further, there is only one portion of the claimed place of use that is high enough for winter feeding of cattle.

Reason for Modified Finding of Fact: The ALJ's finding that the claimed place of use was not useable until the dikes and drainage system were in place is not supported by a preponderance of evidence in the record; the evidence demonstrates that cattle and hogs were raised on the land prior to construction of the dike and drainage system.

b. Proposed Order Finding of Fact # 25 is added as follows (additions are shown in "underline" text):

25. On January 24, 1991, the claimant timely paid irrigation $3700 in irrigation fees for 3599.7 acres. (OWRD Ex. 1 at 5.)

Reason for Additional Findings of Fact: The ALJ's proposed findings of fact failed to fully set forth the evidence on the record.

c. Proposed Order Finding of Fact # 26 is added as follows (additions are shown in "underline" text):

26. The Claimant claimed livestock watering for 3,500 head of cattle and 100 head of horses. (OWRD Ex. 1 at 1.) The Claimants did not include payment of the fee required by ORS 539.081 for livestock use by the January 31, 1991 deadline for filing a Statement and Proof of Claim. (OWRD Ex. 1 at 5.) Livestock watering under this claim is limited to incidental livestock watering during the irrigation season. The incidental livestock watering is limited to 3,500 head of cattle and 100 head of horses, the number claimed.

Reason for Additional Findings of Fact: The ALJ's proposed findings of fact failed to fully set forth the evidence on the record.

d. Proposed Order Finding of Fact # 27 is added as follows (additions are shown in "underline" text):

27. Because there is no evidence on the record to the contrary, the standard rate for irrigation is 1/40 of one cubic foot per second per acre as outlined in Appendix A of the Preliminary Evaluation of Claims (OWRD Ex. 1 at 156) and the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Proposed Order Finding of Fact #27 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard rate for irrigation.

Reason for Additional Finding of Fact: To include a finding regarding a standard rate for irrigation based on the number of acres that should be irrigated with one cubic foot of water per second.

9. **Conclusions of Law.** The entire section titled "Conclusions of Law" with Conclusions 1 - 6 is added to the Proposed Order as follows (additions are shown in "underline" text):

Conclusions of Law

1. The record for Claim 185 establishes the required elements of a pre-1909 water right with a priority date of December 31, 1878.

2. The record establishes that Claim 185 is entitled to a pre-1909 water right for irrigation of 3599.7 acres with incidental livestock watering of 3500 head of cattle and 100 head of horses at a rate of 89.99 cfs and a duty of 3.0 acre-feet per acre per year.

3. The period for use for irrigation with incidental livestock watering is March 1 through October 31.

4. The rate of irrigation is 1/40 of one cfs per acre.

5. Natural overflow is a valid basis or a pre-1909 water right.

6. Irrigation fees were timely paid for 3559.7 acres.

Reason for Adding Conclusions of Law Section: Conclusions of Law were not specified in the ALJ's Proposed Order; the evidence on the record, as described in the Proposed Order's findings of fact section, and the application of the appropriate legal bases to the evidence on the record, as described in the opinion section supports these conclusions.

10. **Discussion.**

a. *Within the section titled "Discussion" of the Proposed Order, the eighth paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in ~~strikethrough~~):*

The third element – reasonable diligence – is dependent upon the circumstances and necessities. ~~In this case, the claimed lands and water were diligently utilized for beneficial purposes commencing in 1858 by Wendolen Nus.~~ Although there is evidence supporting use on the claimed land as early as 1858, the evidence does not support application for transfer of these lands into private

ownership until 1878. While it is not always necessary for the owner of the land and the appropriator of the water to be the same in order to perfect a water right, there is no support for the position that private citizens could appropriate water for the benefit of swamp lands owned by the State before an application was filed for the lands under the Swamp Land Acts. As described in the Findings of Fact, the evidence supports Swamp Land Act applications for these lands by 1878, and the beginning of reclamation and application of water to a beneficial use in that year. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.

The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud. 1878 is the appropriate priority date for this claim. ~~The early State of Oregon swamp act deeds and the State Land Board minutes also demonstrate reasonable diligence in the beneficial use of the lands occurring in the 1878 to 1882 time period. In this claim the water has been continuously and beneficially used since 1858, although a water right cannot be found until 1878 when exclusive claims of right commenced.~~

b. *The following paragraph is added to the end of the "Discussion" section (additions are shown in "underline" text):*

Finally, the Claimant included payment of the fee required by ORS 539.081 by the January 31, 1991 deadline for filing a Statement and Proof of Claim for irrigation use on a place of use equal to 3599.7 acres. (OWRD Ex. 1 at 3 – 6.) The fee paid is equivalent to what is required as per OAR 690-028-0065(5), which is "[i]f for irrigation use, $2 for each acres of irrigated lands up to 100 acres and $1 for each acres in excess of 100." [ORS.539.081(a).] In addition, OWRD did not receive payment for a separate right of use for livestock watering

by the deadline, so the livestock watering portion of Claimant's claim must be denied. Livestock watering approved under Claim 185 is limited to incidental livestock watering during the irrigation season.

ORS 539.210 provides that "it shall be the duty of all claimants ... to appear and submit proof of their respective claims, *at the time and in the manner required by law....*" ORS 539.210 (Emphasis added). Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings ...." ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. The original claimant only paid fees enough for 3599.7 acres for irrigation with incidental livestock watering by the deadline. Claim 185 is limited to the approval of 3599.7[1] acres with incidental livestock watering of 3500 head of cattle and 100 horses.

Reason for Modification: To provide clarity of the basis for limiting the claim to 3599.7 acres on evidence on the record – issue raised in exceptions, to limit livestock water to that which is incidental to irrigation, and to provide clarity in regards to the effect of the Swamp Land Acts and the evidence of swamp land deeds and State Land Board meeting minutes.

[1] On April 2, 2012, OWRD served a letter to Keno Irrigation District on all parties to Case 128. The Department requested the District's preference for the location of acreage reduction needed to limit the place of use to 3559.7 acres. The District responded that "in the event it is necessary" the reduction of 17.6 acres should be in T39S, R8E, Section 34, being 8.2 acres within the SE¼ SE¼ and 9.4 acres within the SW¼ SE¼.(*See* 4/2/2012 OWRD's Letter to Keno Irrigation District for full explanation of the 17.6 acres).

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted with modifications, as set forth in Section A.6, above.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.7, above.
   c. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, above.
   d. The "Conclusions of Law" is added to the Proposed Order as set forth in Section A.9, above.
   e. The "Opinion" is adopted in its entirety.
   f. The "Discussion" is adopted with modifications, as set forth in Section A.10, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 185. Consistent with Sections A.6 through A.10, above, the outcome of the Order has been modified as to limiting the claim to the approval of 3599.7 acres.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 185 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 185

CLAIM MAP REFERENCE:
CLAIM # 185, PAGES 53 AND 54; OWRD INVESTIGATION MAPS – T 39 S, R 8 E AND T 40 S, R 8 E

CLAIMANT: KENO IRRIGATION DISTRICT
9350 HWY 66
KLAMATH FALLS, OR 97601

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 3599.7 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 3500 HEAD CATTLE AND 100 HORSES FOR ENTIRE CLAIM BEING, BEING 235.3 ACRES FROM PODS 1 AND 1-A, 272.4 ACRES FROM POD 2, 419.0 ACES FROM POD 3, 50.0 ACRES FROM POD 4, 218.2 ACES FROM POD 5, 176.3 ACRES FROM POD 6, 230.8 ACES FROM POD 7, 32.8 ACRES FROM POD 8, 155.7 ACES FROM POD 9, 97.0 ACRES FROM POD 10, 509.7 ACES FROM POD 11, 51.3 ACRES FROM POD 12, 123.7 ACES FROM POD 13, 298.4 ACRES FROM POD 14, 89.9 ACES FROM POD 15, 498.9 ACRES FROM POD 16, 15.5 ACES FROM POD 17, AND 124.8 ACRES FROM POD 18.

RATE OF USE:

88.99 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING, 5.88 CFS FROM PODS 1 AND 1-A, 6.81 CFS FROM POD 2, 10.48 CFS FROM POD 3, 1.25 CFS FROM POD 4, 5.46 CFS FROM POD 5, 4.41 CFS FROM POD 6, 5.77 CFS FROM POD 7, 0.82 CFS FROM POD 8, 3.89 CFS FROM POD 9, 2.43 CFS FROM POD 10, 12.74 CFS FROM POD 11, 1.28 CFS FROM POD 12, 3.09 CFS FROM POD 13, 7.46 CFS FROM POD 14, 2.25 CFS FROM POD 15, 12.47 CFS FROM POD 16, 0.39 CFS FROM POD 17, AND 3.12 CFS FROM POD 18.

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:

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1878

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	39 S	8 E	WM	27	SE SW	7
POD 1-A	39 S	8 E	WM	27	SW SW	6
POD 2	39 S	8 E	WM	34	NE NW	9
POD 3	40 S	8 E	WM	2	NW NW	1
POD 4	40 S	8 E	WM	2	SE NW	2
POD 5	40 S	8 E	WM	2	NW SE	3
POD 6	40 S	8 E	WM	2	SW SE	4
POD 7	40 S	8 E	WM	2	SE SW	4
POD 8	40 S	8 E	WM	15	SW NW	1
POD 9	40 S	8 E	WM	15	SW NW	1
POD 10	40 S	8 E	WM	16	NE SE	7
POD 11	40 S	8 E	WM	16	NE NW	10
POD 12	40 S	8 E	WM	9	NE SW	3
POD 13	40 S	8 E	WM	8	NE NE	13
POD 14	40 S	8 E	WM	8	NE NE	13
POD 15	40 S	8 E	WM	5	SW NE	7
POD 16	40 S	8 E	WM	5	SW NE	7
POD 17	40 S	8 E	WM	5	SW NE	7
POD 18	40 S	8 E	WM	5	NE NW	8

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
39 S	8 E	WM	27	SW SW	7	15.0	PODS 1 and 1-A
39 S	8 E	WM	27	SW SW	8	2.1	
39 S	8 E	WM	27	SE SW	6	1.6	
39 S	8 E	WM	33	NE NE	5	32.0	
39 S	8 E	WM	33	NW NE	5	5.8	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
39 S	8 E	WM	33	SW NE		38.1	PODS 1 and 1-A
39 S	8 E	WM	33	SE NE		40.0	
39 S	8 E	WM	34	NE NW	9	19.3	
39 S	8 E	WM	34	NE NW	17	1.4	
39 S	8 E	WM	34	NW NW	10	4.2	
39 S	8 E	WM	34	NW NW	17	35.8	
39 S	8 E	WM	34	SW NW		40.0	
39 S	8 E	WM	33	NE SE		39.6	POD 2
39 S	8 E	WM	33	SE SE		39.6	
39 S	8 E	WM	34	SW NE	15	10.1	
39 S	8 E	WM	34	NE NW	9	18.4	
39 S	8 E	WM	34	SE NW	11	1.2	
39 S	8 E	WM	34	SE NW	16	38.8	
39 S	8 E	WM	34	NE SW		22.4	
39 S	8 E	WM	34	NW SW		37.1	
39 S	8 E	WM	34	SW SW		36.0	
39 S	8 E	WM	34	SE SW		29.2	
39 S	8 E	WM	34	NE SE	13	6.0	POD 3
39 S	8 E	WM	34	NW SE	14	36.5	
39 S	8 E	WM	34	SW SE		30.6	
39 S	8 E	WM	34	SE SE	13	15.2	
40 S	8 E	WM	2	NW NW		0.5	
40 S	8 E	WM	2	NW NW	1	3.1	
40 S	8 E	WM	2	NW NW	12	0.1	
40 S	8 E	WM	2	SW NW	2	4.0	
40 S	8 E	WM	2	SW NW	12	22.9	
40 S	8 E	WM	3	NE NE	1	28.2	
40 S	8 E	WM	3	NE NE	3	4.4	
40 S	8 E	WM	3	NE NE	5	0.7	
40 S	8 E	WM	3	NW NE	2	8.7	
40 S	8 E	WM	3	NW NE	3	29.6	
40 S	8 E	WM	3	SW NE	2	2.4	
40 S	8 E	WM	3	SW NE	4	30.0	
40 S	8 E	WM	3	SE NE	1	1.1	
40 S	8 E	WM	3	SE NE	5	38.9	
40 S	8 E	WM	3	NE NW		40.0	
40 S	8 E	WM	3	NW NW		40.0	
40 S	8 E	WM	3	SW NW		37.7	
40 S	8 E	WM	3	SE NW		38.4	
40 S	8 E	WM	2	SW NE		0.1	POD 4
40 S	8 E	WM	2	SW NE	2	0.3	
40 S	8 E	WM	2	NE NW	1	1.1	
40 S	8 E	WM	2	NW NW	1	19.2	
40 S	8 E	WM	2	SW NW	2	4.6	
40 S	8 E	WM	2	SE NW		1.5	
40 S	8 E	WM	2	SE NW	2	19.7	
40 S	8 E	WM	3	NE NE	1	3.5	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
40 S	8 E	WM	2	SW NW	2	5.5	POD 5
40 S	8 E	WM	2	SW NW	12	3.0	
40 S	8 E	WM	2	SE NW	2	8.9	
40 S	8 E	WM	3	NE SW		31.9	
40 S	8 E	WM	2	NE SW	3	25.9	
40 S	8 E	WM	2	NE SW	11	0.1	
40 S	8 E	WM	3	NW SW		35.3	
40 S	8 E	WM	2	NW SW	3	0.5	
40 S	8 E	WM	2	NW SW	11	37.1	
40 S	8 E	WM	3	NE SE		36.3	
40 S	8 E	WM	3	NW SE		33.7	
40 S	8 E	WM	2	SW SW		38.2	POD 6
40 S	8 E	WM	2	SW SW	4	0.4	
40 S	8 E	WM	2	SW SW	10	26.0	
40 S	8 E	WM	3	SE SW		34.8	
40 S	8 E	WM	3	SW SE		37.7	
40 S	8 E	WM	3	SE SE		39.2	
40 S	8 E	WM	10	NE NE	12	17.8	POD 7
40 S	8 E	WM	10	NW NE	11	38.0	
40 S	8 E	WM	10	SW NE	11	8.4	
40 S	8 E	WM	10	NE NW		26.8	
40 S	8 E	WM	10	SE NW	10	33.0	
40 S	8 E	WM	10	NE SW	9	26.9	
40 S	8 E	WM	10	NW SW		0.7	
40 S	8 E	WM	10	SW SW		30.7	
40 S	8 E	WM	10	SE SW		18.2	
40 S	8 E	WM	11	NW NW		1.4	
40 S	8 E	WM	15	NE SW		1.8	
40 S	8 E	WM	15	NW NW	19	26.7	
40 S	8 E	WM	15	SW NW	19	0.4	
40 S	8 E	WM	15	NE NW		0.9	POD 8
40 S	8 E	WM	15	NE NW	18	3.4	
40 S	8 E	WM	15	NW NW		1.0	
40 S	8 E	WM	15	NW NW	18	5.6	
40 S	8 E	WM	15	NW NW	19	5.2	
40 S	8 E	WM	15	SW NW	1	15.6	
40 S	8 E	WM	15	SW NW	18	1.1	
40 S	8 E	WM	10	NE NW		9.5	POD 9
40 S	8 E	WM	10	NW NW		38.9	
40 S	8 E	WM	10	SW NW		40.0	
40 S	8 E	WM	10	SE NW		4.0	
40 S	8 E	WM	10	NW SW		37.6	
40 S	8 E	WM	10	SW SW		8.6	
40 S	8 E	WM	15	SW NW	1	16.1	
40 S	8 E	WM	16	SE NE	8	1.0	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
40 S	8 E	WM	9	SE SE		38.4	POD 10
40 S	8 E	WM	16	NE NE	9	3.9	
40 S	8 E	WM	16	NE NE	19	34.9	
40 S	8 E	WM	16	SE NE	8	19.3	
40 S	8 E	WM	16	SE NE	19	0.5	
40 S	8 E	WM	4	NE NE		38.7	POD 11
40 S	8 E	WM	4	SE NE		38.6	
40 S	8 E	WM	4	NE SE		34.7	
40 S	8 E	WM	4	SE SE		38.3	
40 S	8 E	WM	9	NE NE		38.2	
40 S	8 E	WM	9	NW NE		38.3	
40 S	8 E	WM	9	SW NE		38.3	
40 S	8 E	WM	9	SE NE		38.3	
40 S	8 E	WM	9	NE NW		20.0	
40 S	8 E	WM	9	SE NW	12	20.0	
40 S	8 E	WM	9	NE SW	3	8.5	
40 S	8 E	WM	9	NE SW	11	3.0	
40 S	8 E	WM	9	NE SE		38.3	
40 S	8 E	WM	9	NW SE	2	2.6	
40 S	8 E	WM	9	NW SE	10	34.1	
40 S	8 E	WM	9	SW SE	9	30.6	
40 S	8 E	WM	16	NW NE	9	18.1	
40 S	8 E	WM	16	NW NE	19	17.4	
40 S	8 E	WM	16	SW NE		13.7	
40 S	8 E	WM	9	NE SW	3	16.1	POD 12
40 S	8 E	WM	9	NW SW	3	2.2	
40 S	8 E	WM	9	SE SW	8	6.4	
40 S	8 E	WM	9	NW SE	2	1.0	
40 S	8 E	WM	9	NW SE	10	0.6	
40 S	8 E	WM	9	SW SE	1	4.6	
40 S	8 E	WM	9	SW SE	9	3.0	
40 S	8 E	WM	16	NW NE	9	3.1	
40 S	8 E	WM	16	NW NE	19	0.2	
40 S	8 E	WM	16	NE NW		0.6	
40 S	8 E	WM	16	NE NW	10	13.5	
40 S	8 E	WM	4	SW SW		13.3	POD 13
40 S	8 E	WM	5	SE SE	17	2.8	
40 S	8 E	WM	8	NE NE	13	5.8	
40 S	8 E	WM	8	NE NE	14	1.2	
40 S	8 E	WM	9	NE NW		18.4	
40 S	8 E	WM	9	NW NW	5	6.8	
40 S	8 E	WM	9	NW NW	13	30.6	
40 S	8 E	WM	9	SW NW	4	23.9	
40 S	8 E	WM	9	SW NW	12	3.7	
40 S	8 E	WM	9	SE NW	4	3.2	
40 S	8 E	WM	9	SE NW	12	14.0	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
40 S	8 E	WM	4	SW NE		8.1	POD 14
40 S	8 E	WM	4	NE NW		1.0	
40 S	8 E	WM	4	NW NW		7.2	
40 S	8 E	WM	4	SW NW		28.5	
40 S	8 E	WM	4	SW NW	1	0.2	
40 S	8 E	WM	4	SE NW		32.0	
40 S	8 E	WM	4	SE NW	1	0.8	
40 S	8 E	WM	4	NE SW		2.5	
40 S	8 E	WM	4	NE SW	4	0.8	
40 S	8 E	WM	4	NW SW		14.0	
40 S	8 E	WM	4	SW SW		3.7	
40 S	8 E	WM	4	SW SW	3	1.0	
40 S	8 E	WM	4	SE SW		17.8	
40 S	8 E	WM	4	NW SE		27.6	
40 S	8 E	WM	4	SW SE		28.1	
40 S	8 E	WM	5	NE NE	14	4.2	
40 S	8 E	WM	5	SE NE	2	10.8	
40 S	8 E	WM	5	SE NE	15	28.8	
40 S	8 E	WM	5	NE SE	3	18.8	
40 S	8 E	WM	5	NE SE	16	21.2	
40 S	8 E	WM	5	SE SE	4	18.0	
40 S	8 E	WM	5	SE SE	17	19.2	
40 S	8 E	WM	8	NE NE	13	4.1	
40 S	8 E	WM	5	SW NE	7	13.1	POD 15
40 S	8 E	WM	5	SE SW		2.6	
40 S	8 E	WM	5	SE SW	5	3.8	
40 S	8 E	WM	5	NW SE		0.5	
40 S	8 E	WM	5	NW SE	6	27.9	
40 S	8 E	WM	5	SW SE		0.3	
40 S	8 E	WM	5	SW SE	5	39.7	
40 S	8 E	WM	8	NW NE	13	2.0	
39 S	8 E	WM	32	NE SE	7	0.6	POD 16
39 S	8 E	WM	32	NE SE	12	2.1	
39 S	8 E	WM	32	SW SE	9	10.9	
39 S	8 E	WM	32	SE SE	8	20.0	
39 S	8 E	WM	32	SE SE	13	14.7	
39 S	8 E	WM	33	NE SW		35.6	
39 S	8 E	WM	33	NW SW		24.6	
39 S	8 E	WM	33	SW SW		40.0	
39 S	8 E	WM	33	SE SW		40.0	
39 S	8 E	WM	33	NW SE		38.0	
39 S	8 E	WM	33	SW SE		40.0	
40 S	8 E	WM	4	NW NE		40.0	
40 S	8 E	WM	4	SW NE		30.7	
40 S	8 E	WM	4	NE NW		39.0	
40 S	8 E	WM	4	NW NW		32.8	
40 S	8 E	WM	4	SE NW		6.6	
40 S	8 E	WM	4	NW SE		0.3	
40 S	8 E	WM	5	NE NE	1	15.0	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
40 S	8 E	WM	5	NE NE	14	19.1	POD 16
40 S	8 E	WM	5	NW NE		39.4	
40 S	8 E	WM	5	SW NE	7	9.0	
40 S	8 E	WM	5	SE NE		0.5	
40 S	8 E	WM	5	NE NW	8	14.2	POD 17
40 S	8 E	WM	5	SE NW	7	1.3	
39 S	8 E	WM	32	NE SW		2.6	POD 18
39 S	8 E	WM	32	SE SW	2	3.2	
39 S	8 E	WM	32	SE SW	10	4.1	
39 S	8 E	WM	32	NE SE	7	31.7	
39 S	8 E	WM	32	NE SE	12	2.8	
39 S	8 E	WM	32	NE SE	4	0.5	
39 S	8 E	WM	32	NW SE	4	32.4	
39 S	8 E	WM	32	NW SE	7	5.2	
39 S	8 E	WM	32	SW SE	3	14.2	
39 S	8 E	WM	32	SW SE	9	12.5	
39 S	8 E	WM	32	SE SE	3	0.9	
39 S	8 E	WM	32	SE SE	8	1.7	
39 S	8 E	WM	33	NW SW	4	11.7	
40 S	8 E	WM	5	NE NW	8	1.3	

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 OREGON DEPARTMENT OF FISH AND WILDLIFE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 186

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 186 (Claimant: OREGON DEPARTMENT OF FISH AND WILDLIFE.) and its associated contests (47, 281, 516, 986, 1221, 1455, 1804, 2491, 2778, 2878, 2854, 3176, 3407, 3837, 4179, and 4951) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 129.

2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER (Proposed Order) for Claim 186 on September 27, 2007 and an AMENDED PROPOSED ORDER (Amended Proposed Order) for Claim 186 on October 1, 2007.

3. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by (1) the Klamath Project Water Users (KPWU); (2) the United States; and (3) Oregon Department of Fish and Wildlife (ODFW). Responses to exceptions were timely filed by (1) KPWU, (2) the United States, and (3) ODFW.

4. The exceptions filed to the Amended Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 186, and are found to be persuasive in part; therefore, modifications are made to the Amended Proposed Order as described in Sections A.6, A.7, and A.8, below.

5. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.

b. The "Evidentiary Rulings" is adopted in its entirety.
c. The "Issues Presented" is adopted in its entirety.
d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, below.
e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, below.
f. The "Opinion" is adopted with modifications, as set forth in Section A.8, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 186. Consistent with Sections A.6, A.7, A.8, and A.9, below, the outcome of the Order has been modified to limit the claim to the approval of 700.1 acres.

6. **Findings of Facts.** The Proposed Order's "Findings of Fact" section is modified as shown below. Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding.

a. Modified "Point of Diversion # 6" in Finding of Fact #1

~~NW¼ SW¼ Section 24 T 39S R 8E.W.M~~.

NE ¼ SE ¼ Section 23 T 39s R 8E.W.M.

Reason for Modification: A careful reading of the map of record shows that Point of Diversion #6 is actually situated close to the section line in Section 23. This is also verified by the Diversion Point #6 location description given on the Field Inspection Report filed as part of the claim. (Ex C-33, Ex B; OWRD Ex. 1 at 7, 83.)

b. Modified "Claim Places of Use Listing" in Finding of Fact #1

The claimed places of use are located as follows:

Location		Gov't Lot	Acreage	Diversion Point
T39S R8E.W.M.				
Section 23:				
	NE¼ SE¼	3	0.1 acre	#6
	SE¼ SE¼	3	17.2 acres	#6
Section 24:				
	NE¼ NE¼	4	6.5 acres	#2
	SW¼ NE¼	5	26.7 acres	#4
	SE¼ NE¼		22.3 acres	#2
	NW¼ SW¼	7	24.4 acres	#6
	SW¼ SW¼		37.2 acres	#6
	SE¼ SW¼		15.3 acres	#4 (2.7 acres), #5 (12.6 acres)
	NE¼ SE¼		21.3 acres	#2 (8.0 acres), #3 (13.3 acres)

NW¼ SE ¼		24.2 acres	#4 (22.7 acres), #5 (1.5 acres)
SW¼ SE ¼		38.5 acres	#4 (3.4 acres), #5 (35.1 acres)
SE¼ SE ¼		38.8 acres	#3
Section 25:			
NE¼ NE¼		1.0 acres	#5
NW¼ NE¼		7.1 acres	#5
SW¼ NE¼		5.3 acres	#5
NW¼ NW¼		38.0 acres	#7 (22.3 acres), #8 (15.7 acres)
SW¼ NW ¼		38.3 acres	#7 (0.8 acres), #8 (37.5 acres)
NW¼ SW ¼		5.7 acres	#8
SW¼ SW¼		24.8 acres	#8
NE¼ SE¼	1	~~3.5~~ 2.7 acres	~~#1~~ #9
NE¼ SE¼	2	0.8 acres	~~#1~~ #9
SE¼ SE¼	1	~~5.3~~ 4.8 acres	#9
SE¼ SE¼	2	0.5 acre	#9
Section 26:			
NE¼ NE ¼	4	37.1 acres	#7
NW¼ NE ¼	5	3.0 acres	#7
SW¼ NE ¼	6	27.5 acres	#7 (8.2 acres), #8 (19.3)
SE¼ NE ¼		37.5 acres	#7 (17.4 acres), #8 (20.1 acres)
~~SW~~ SE¼ NW¼	7	1.7 acres	#8
NE¼ SW¼	15	2.6 acres	#8
NE¼ SW¼	8	~~25.3~~ 22.7 acres	#8
SW¼ SW¼	10	~~3.2~~ 2.0 acres	#8
SW¼ SW¼	15	1.2 acres	#8
SE¼ SW¼	15	~~37.1~~ 30.8 acres	#8
SE¼ SW¼	9	6.3 acres	#8
NE¼ SE¼		33.2 acres	#8
NW¼ SE¼	13	7.6 acres	#8
NW¼ SE¼	11	~~34.1~~ 26.5 acres	#8
SW¼ SE¼	14	10.8 acres	#8
SW¼ SE¼	12	~~29.0~~ 18.2 acres	#8
SE¼ SE¼		37.5 acres	#8
Section 35:			
NE¼ NE¼	9	40.8 acres	#8
Section 36:			
NW¼ NE¼	1	1.9 acres	#9
SW¼ NE¼	2	23.2 acres	#9
SE¼ NE ¼		3.7 acres	#9
NE¼ NW¼		0.5 acre	#8
NW¼ NW ¼		27.9 acres	#8
NE¼ SW¼	6	~~6.1~~ 5.2 acres	#8
NE¼ SW¼	10	0.9 acres	#8
SE¼ SW¼	11	~~9.6~~ 8.6 acres	#8
SE¼ SW¼	5	1.0 acres	#8

T39S R9E.W.M.

Section 19:

NW¼ NE ¼	8	3.7 acres	#2
NW¼ NE ¼		~~7.3~~ 3.6 acres	#2
SW¼ NE ¼		0.7 acres	#2
NE¼ NW ¼	9	2.2 acres	#2
NE¼ NW ¼		~~8.6~~ 6.4 acres	#2
NW¼ NW¼	10	0.2 acres	#2
NW¼ NW¼		~~7.0~~ 6.8 acres	#2
SW¼ NW¼	11	30.1 acres	#2
SE¼ NW ¼		8.9 acres	#2
NE¼ SW¼		1.0 acres	#3
NW¼ SW ¼	12	18.4 acres	#2 (1.1 acre), #3 (17.3 acres)
SW¼ SW ¼	13	36.2 acres	#3
SE¼ SW ¼		1.5 acres	#3
NW¼ SE¼	2	5.6 acres	#1
SW¼ SE ¼	3	22.4 acres	#1

Section 30:

NW¼ NE¼	1	16.5 acres	#1
SW¼ NE ¼		0.9 acre	#1
NE¼ NW ¼	1	7.0 acres	#1
SW¼ NW¼	2	2.1 acres	#9
SE¼ NW ¼	2	26.4 acres	#1 (14.4 acres), #9 (12.0 acres)
NE¼ ~~NW~~ SW¼		8.8 acres	#9
NW¼ SW ¼	3	18.4 acres	#9
SW¼ SW¼		21.7 acres	#9
Grand total	**1070.9**		

(OWRD Ex. 1 at 57-65.)

Reason for Modification: To add Government Lots to the acreage listing because the Swamp Act Deeds include certain lands only listed by Government Lots. Government Lots were determined from a combination of the claimed place of use listing, and OWRD's Field Investigation Map (OWRD Ex. 1 at 9-12, 83), and Exhibit C-4. To correct scrivener's errors on two quarter-quarter descriptions. The acreage was incorrectly entered on the worksheet at OWRD Ex. 1 at 64 but the map correctly displays the location of the acreage. (OWRD Ex. 1 at 83.) To correct the claimed point of diversion from #1 to #9 in the NE¼ SE¼ Section 25 (OWRD Ex. 1 at 65.)

c. Modified Proposed Order Finding of Fact 3:

3) Beginning in the 1850s, European settlers began coming into the area. They grazed cattle in the area of the land in question, and, perhaps, harvested hay there. (Ex. C16 at 2 through 4.) The land in question in this case was immediately south of and adjoined the Klamath River, and much of this land was overflowed

seasonally by high water from the Klamath River. (*Id.*) There is no record, however, that this land was taken into exclusive ownership by any person until the 1870s.

Reason for Modification: The evidence in the record is clear that much of the claimed place of use was subject to seasonal flooding from the Klamath River. The record is contradictory as to whether the entirety of the place of use was subject to flooding. The ALJ's finding applied to the entirety of the place of use, and is not supported by a preponderance of the evidence.

d. Modified Proposed Order Finding of Fact 4

4) Beginning in the 1870s, the State of Oregon began designating swamp and overflow lands to be transferred to the State from the federal government and sold on terms specified by statute. (Ex. U8-U11.) Some purchasers designated dry land as swamp land, in an effort to defraud. (Ex. U8 at 5.) On February 14, 1882, the Board of Commissioners for the Sale of School and University Lands ("State Land Board") determined that John F. Miller had applied to purchase certain swamp lands on April 9, 1872, and had subsequently proven to the satisfaction of the Board that the claimed lands had been reclaimed. The portions of these lands that are subject to this claim were described as follows:

T39S R8E W.M.

Section 23:

NE¼ SE¼, Lot 3	0.1 acres
SE¼ SE¼, Lot 3	17.2 acres

Section 24:

~~SE¼ NE¼~~	~~22.3 acres~~
SW¼ NE¼, Lot 5	26.7 acres
NW¼ SW¼, Lot 7	24.4 acres

Section 26:

SE¼ NE¼	37.5 acres

T39S R8E W.M.

Section 19

SW¼ SE¼, Lot 3, 22.4

(Corrected Ex. C36.) With the exception of the 22.4 acres claimed in the SW¼ SE¼, Lot 3, Section 19, this property was subsequently conveyed to John F. Miller on July 5, 1882, and August 16, 1882 by Swamp Act deeds. (Ex U19 at 10, 11; Ex. C-7.)

Reason for Modification: The 22.3 acres in the SE¼ NE¼, Section 24 are removed from Finding of Fact #4 because they were addressed at the Board's August 12, 1882 meeting, and not the Board's February 14, 1882 meeting. These acres were conveyed to John F. Miller on August 16, 1882.

e. Modified Proposed Order Finding of Fact 5

5) On February 10, 1882, the State Land Board issued a Swamp Act deed to John F. Miller for property including the following subject to this claim:

T39S R8E W.M.

Section 24:

NE¼ NE¼, Lot 4	6.5 acres

Section 26:

NE¼ NE¼, Lot 4	37.1 acres
NW¼ NE¼, Lot 5	3.0 acres
SW¼ NE¼, Lot 6	27.5 acres
~~SW¼~~ SE¼ NW¼, Lot 7	1.7 acres

T39S R9E W.M.

Section 19:

NW¼ NE¼, Lot 8	~~7.3~~ 3.7 acres
NE¼ NW¼, Lot 9	~~8.6~~ 2.2 acres
NW¼ NW¼, Lot 10	~~7.0~~ 0.2 acres
SE¼ NW¼	8.9 acres

(Ex. C5; Ex. U19 at 11.)

Reason for Modification: To add Government Lot numbers. To correct a scrivener's error in a quarter-quarter description. The acreage was incorrectly entered on the

worksheet at OWRD Ex. 1 at 64 but the map correctly displays the location of the acreage. (OWRD Ex. 1 at 83.) To correct the acreages in Section 19 to reflect the locations of the claimed acres which are included in the February 10, 1882 Swamp Act deed, being the SE¼ NW¼ and Lots 8, 9, and 10. Within the NW¼ NE¼, 3.6 acres are above the meander line, and are not included in Lot 8; within the NE¼ NW¼, 6.4 acres are above the meander line, and are not included in Lot 9; and within the NW¼ NW¼, 6.8 acres are above the meander line, and are not included in Lot 10, (Compare OWRD Ex. 1 at 83 and Exs. C3, C5.)

f. Modified Proposed Order Finding of Fact 6

6) On August 16, 1882, the State Land Board issued a Swamp Act deed to John F. Miller for property including the following that is subject to this claim:

T39S R8E W.M.

Section 24:

SE¼ NE¼	22.3 acres[1]
SW¼ SW¼	37.2 acres
SE¼ SW¼	15.3 acres
NE¼ SE¼	21.3 acres
NW¼ SE¼	24.2 acres
SW¼ SE¼	38.5 acres
SE¼ SE¼	38.8 acres

Section 25:

NE¼ NE¼	1.0 acres
NW¼ NE¼	7.1 acres
SW¼ NE¼	5.3 acres
NW¼ NW¼	38.0 acres
SW¼ NW¼	38.3 acres
NW¼ SW¼	5.7 acres
SW¼ SW¼	24.8 acres
NE¼ SE¼, Lot 2	~~3.5~~ 0.8 acres
SE¼ SE¼, Lot 2	0.5 acres

[1] ~~Although conveyed in 1882, this parcel was included in the property subject to Miller's 1872 application, as found by the State Land Board on February 14, 1882.~~

Section 26:

SE¼ NE¼	37.5 acres[2]
NE¼ SW¼, Lot 8	~~25.3~~ 22.7 acres
SW¼ SW¼, Lot 10	~~3.2~~ 2.0 acres
SE¼ SW¼, Lot 9	6.3 acres
NE¼ SE ¼	33.2 acres
NW¼ SE¼, Lot 11	26.5 acres
SW¼ SE¼, Lot 12	~~29.0~~ 18.2 acres
SE¼ SE¼	~~26.7~~ 37.5 acres

Section 35:

NE¼ NE¼, Lot 9	40.8 acres

T39S R9E W.M.

Section 19:

SW¼ NE¼	0.7 acres
SW¼ NW¼, Lot 11	30.1 acres
NE¼ SW¼	1.0 acres
NW¼ SW¼, Lot 12	18.4 acres
SW¼ SW¼, Lot 13	36.2 acres
SE¼ SW¼	1.5 acres
~~NW¼ SE¼, Lot 2~~	~~5.6 acres~~

(Ex. C7.)

Reason for Modification: To add government lot numbers. To move a footnote from one quarter-quarter listing to another to make the reference correct. Modifications to Section 25: 2.7 acres within the NE¼ SE¼, and 4.8 acres within the SE¼ SE¼ are east of the meander line, and are located in Lot 1. Lot 1 was not included in the August 16, 1882 Swamp Act deed, resulting in reduced acreages. (Exs. C-4, C7; Ex. U 19 at 11; OWRD Ex. 1 at 83.) The addition of the 0.5 acres within Lot 2, SE¼ SE¼ is because a review of the maps in the record supports the conclusion that this acreage was conveyed to John Miller as part of the August 16, 1882 Swamp Act deed. (Exs. C4, C7; Ex. U 19 at 11; OWRD Ex. 1 at 83.) Modifications to Section 26: The addition of the 37.5 acres within the SE¼ NE¼ is because a review of the maps in the record supports the conclusion that

[2] Although conveyed in 1882, this parcel was included in the property subject to Miller's 1872 application, as found by the State Land Board on February 14, 1882.

this acreage was conveyed to John Miller as part of the August 16, 1882 Swamp Act deed. (Ex. C4, C7; Ex. U 19 at 11; OWRD Ex. 1 at 83.) 2.6 acres within the NE¼ SW¼ and 1.2 acres within the SW¼ SW¼ are located in Lot 15. Lot 15 was not included in the August 16, 1882 Swamp Act deed to John F. Miller but was actually part of the April 6, 1889 Swamp Act deed to E.C. Small. (Exs. C4, C7, C8; OWRD Ex. 1 at 83.) Within the SW¼ SE¼, 10.8 acres are located in Lot 14. Lot 14 was not included in the August 16, 1882 Swamp Act deed to John F. Miller but was actually part of the April 6, 1889 Swamp Act deed to E.C. Small. (Exs. C4, C7, C8; OWRD Ex. 1 at 83.) The modification to the listing for the SE¼ SE¼ is to correct a scrivener's error in the total acreage for this claimed place of use. (Ex. C7; Ex. U 19 at 11; OWRD Ex. 1 at 83.) Modifications to Section 19, T39S R9E W.M.: The 5.6 acres within located within Lot 2 of the NW¼ SE¼. These acres are omitted because neither Lot 2 nor the NW¼ SE¼ were included in the August 16, 1882 Swamp Act deed. (Exs. C4, C7; Ex. U 19 at 11; OWRD Ex. 1 at 83.)

g. Modified Proposed Order Finding of Fact 7

7) On April 6, 1889, the State Land Board issued a Swamp Act deed to E.C. Small for property including the following that is subject to this claim:

T39S R8E W.M.

Section 26:

NE¼ SW¼¼, Lot 15	2.6 acres
SW¼ SW¼ ¼, Lot 15	1.2 acres
SE¼ SW¼¼, Lot 15	30.8 acres
NW¼ SE¼¼, Lot 13	7.6 acres
~~SE~~ SW¼ SE¼¼, Lot 14	10.8 acres

(Exs. C4, C-8; Ex. U19 at ~~25~~ 26.)

Reason for Modification: To correct a scrivener's error in a quarter-quarter description. (Ex. C8.); to add two claimed quarter-quarters that were included in the April 6, 1889 Swamp Act deed to E.C. Small. This deed included Lots 13, 14, 15 within Section 26, T39S R8E W.M. (Exs. C4, C8; OWRD Ex. 1 at 83.)

h. Modified Proposed Order Finding of Fact 8

8) The evidence in the record establishes that the three Swamp Act properties ~~property~~ conveyed to Miller were under private ownership no later than 1882 and the Swamp Act property conveyed to Small was under private ownership no later than 1889. Natural grass was harvested from the two Miller properties described in the July 5, 1882 and August 16, 1882 Swamp Act deeds, ~~form the land,~~ either

through grazing or as hay, from at least the time that it was in private hands. (OWRD Ex. 1 at 18-42; Ex. C16 at 3, 4; Ex. C47 at 3; Ex. C11 at 5; Ex. C12 at 3; Ex. C36.)

Reason for Modification: The finding as written in the Amended Proposed Order is not supported by a preponderance of evidence in the record. To correct this, the modifications clarify the year the three Miller Swamp Act properties entered private ownership and clarify that the July 5, 1882 and August 16, 1882 Miller Swamp Act deeds are evidence of beneficial use of water, but the February 14, 1882 Miller Swamp Act deed and the E.C. Small Swamp Act deed are not.

i. Modified Proposed Order Finding of Fact 9

9) On June 1, 1895, William Miller conveyed to Sarah Miller, his wife, an undivided one-half interest in the following-described real property, among others:

T39S R8E W.M.

Section 36:

NW¼ NE¼, Lot 1	1.9 acres
SW¼ NE¼, Lot 2	23.2 acres
SE¼ NE¼	3.7 acres
NE¼ NW¼	0.5 acres
NW¼ NW ¼	27.9 acres
NE¼ SW¼, Lots 6, 10	6.1 acres
SE¼ SW ¼, Lots, 5, 11	9.6 acres

T39S R9E W.M.

Section 19:

NW¼ SE¼, Lot 2	5.6 acres
SW¼ SE¼, Lot 3	22.4 acres

Section 30:

NW¼ NE¼, Lot 1	16.5 acres
NE¼ NW¼, Lot 1	7.0 acres

(Ex. U19 at 2, 15-17)[3]

~~all in Section 36, T39S R8E W.M. The record does not include any evidence as to how or when William Miller acquired the property that he transferred to Sarah Miller, although included in the property transferred were parcels that had been conveyed to John Miller by the Swamp Act deeds listed above. None of the Swamp Act deeds in the record, however, describes any property in Section 36, T39S R8E W.M.~~

The conveyance from William Miller to Sarah Miller establishes that the lands listed above were in private ownership no later than 1895 (or 1886, in the case of the 22.4 acres in the SW¼ SE¼ of Section 19, based on the 1886 deed to William Miller from John Miller and Jarilda Miller). (Ex. U19 at 2, 12-14.)

Although not listed here, the property transferred from William Miller to Sarah Miller includes parcels that had been conveyed to John Miller by the Swamp Act deeds listed in Findings of Fact #5, #6, and #10. None of these Swamp Act deeds, however, describes any of the property listed in this Finding of Fact #9

Reason for Modification: The additional place of use descriptions are added because Ex. U19 at 15-17 identifies these parcels of claimed land as being conveyed from William Miller to Sarah Miller. None of these additional quarter-quarters were included within the three John F. Miller Swamp Act deeds.

j. Additional Proposed Order Finding of Fact #10

10) On July 5, 1882, the State Land Board issued a Swamp Act deed to John F. Miller for property including the following subject to this claim:

T39S R8E W.M.

Section 23:

NE¼ SE¼, Lot 3	0.1 acres
SE¼ SE¼, Lot 3	17.2 acres

[3] While the deed conveying this land is hand written and difficult to read, on the bottom of page 16 of Ex. U19 the deed clearly includes the three parcels of land added to Finding of Fact #9.

Section 24:

SW¼ NE¼, Lot 5	26.7 acres
NW¼ SW¼, Lot 7	24.4 acres

(Ex. U19 at 10.)

Reason for Modification: To fully set forth the evidence on the record pertaining to claimed lands subject to the July 5, 1882 Swamp Act deed.

k. Additional Proposed Order Finding of Fact # 11

11) The following property subject to this claim was neither included on any of the Swamp Act deeds found in the record, nor included on the June 1, 1895 property transfer from William Miller to Sarah Miller:

T39S R8E W.M.

Section 25:

NE¼ SE¼, Lot 1	2.7 acres
SE¼ SE¼, Lot 1	4.8 acres

Section 36:

NW¼ NE¼, Lot 1	1.9 acres
SW¼ NE¼, Lot 2	23.2 acres
SE¼ NE¼	3.7 acres

T39S R9E W.M.

Section 19:

NW¼ NE¼	3.6 acres
NE¼ NW¼	6.4 acres
NW¼ NW¼	6.8 acres

Section 30:

SW¼ NE¼	0.9 acres
SW¼ NW¼, Lot 2	2.1 acres
SE¼ NW¼, Lot 2	26.4 acres
NE¼ SW¼	8.8 acres
NW¼ SW¼, Lot 3	18.4 acres
SW¼ SW¼	21.7 acres

Reason for Modification: To fully set forth the evidence on the record.

7. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #2, 3, 5, 6, 8, 12, 14, 16, 18, and 20 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

2. The vested water right on a portion of the claimed place of use is ~~prior to, and not~~ in part included in the claims filed by the United States for the Klamath Project.

3. Natural flood/~~sub-irrigation/~~natural overflow, with other factors, can form the basis of a valid pre-1909 water right.

5. The record establishes beneficial use of water on a part of the claimed place of use before February 24, 1909.

6. ~~Works were constructed within a reasonable time.~~ Under the facts in this case, beneficial use of natural overflow was sufficient to establish a vested right for irrigation without the construction of irrigation works.

8. The part of the claim that is recognized herein is recognized for an irrigation purpose of use. The use of the claimed water for irrigation of land for wildlife feed and habitat within the terms of use recognized herein is not wasteful.

12. The question of whether claimant's use of water is detrimental to contestants' water rights is not relevant in this case to a determination of Claimant's rights. ~~Claimant's use and application of the water is prior to, and not detrimental to contestants' priority water rights.~~

14. "Over-appropriation" is not a relevant concept for determining the validity of claimed pre-1909 water rights. ~~The Klamath River and its tributaries were not over-appropriated at the time claimant began its use of the claimed water.~~

16. It is irrelevant in determining this claim whether the purposes of the Klamath Reclamation Project as authorized by Congress, will be realized in the event that

water used pursuant to the recognized portion of this claim interferes with the purpose of the Klamath Reclamation Project. ~~, as the allowed portion of the right is senior to the priority of the Klamath Reclamation Project~~

18. The rights to use water for ~~claimed~~ the purposes recognized herein are not subordinate to ~~senior to~~ domestic and irrigation rights of contestants under the Klamath Compact.

20. The use of water on the recognized portion of the claim began prior to February 24th 1909.

Reason for Modifications: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the record, as described in the modified opinion section, below, supports conclusions other than those in the Amended Proposed Order.

8. **Opinion.** The "Opinion" section of the Amended Proposed Order is modified as shown below (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text).

a. The subsection entitled "THE PRE-1909 RIGHT" is modified as described in subsections 7.a.i through 7.a.iv, below.

i. "THE PRE-1909 RIGHT" Paragraphs 1-3 are modified as follows:

The parties stipulated to limit the claim to 1051.6 acres, at a specified rate and duty. Under the stipulation ODFW limited its claim to acreage listed in OWRD Exhibit 1 at pages 57 to 65. However, as discussed more fully below, the claim can only be allowed to ~~868.5~~ 700.1 acres.

In its brief, ODFW also stated that all the property subject to this claim was described in the Swamp Act deeds to John Miller and E.C. Small that are contained in the record. ODFW then argued that the conveyance by Swamp Act deeds demonstrated that water was beneficially used on the property through natural overflow at the time the conveyances were made. ~~While,~~ As discussed below, OWRD concludes ~~I conclude~~ that water was applied to ~~apportioned for~~ beneficial use on the property conveyed by Swamp Act deeds to John F. Miller with the dates of July 5, 1882 and

August 16, 1882, as of dates three years' prior to the date each of the respective deeds was issued. ~~the date the property was shown to be occupied.~~ However, the Swamp Act deeds to John F. Miller from February 10, 1882 and to E.C. Small from April 6, 1889 do not demonstrate that water was apportioned for beneficial use on the property conveyed. Furthermore, not all the land subject to this claim was described in the Swamp Act deeds noted, as demonstrated here: (1) None of the Swamp Act deeds describe any of the claimed property in Section 30 T39S R8E. W.M. (2) Although the record contains a deed from William Miller to Sarah Miller dated June 1, 1895 describing all the claimed property in Section 36, T39S R8E. W.M., the record does not show that this property was originally acquired by a Swamp Act deed. (Exs C5; C-7; C-8; Ex. U 19 at 10, 11; OWRD Ex. 1 at 83.) (3) While John Miller acquired Lot 4 of Section 19 T39S R9E WM (west of the meander line in SW¼ SE¼), he did not acquire the 22.4 acres of Lot 3 (east of the meander line) within that section, which is part of that section listed in OWRD Exhibit 1, at page 57 as part of the SW¼ SE¼ of Section 19 that was included in the claim.[4] (Exs C4, C5; C-7; C-8; Ex. U 19 at 10, 11; OWRD Ex. 1 at 83.) (4) Similarly, John Miller did not acquire the 5.6 acres in Lot 2 of Section 19 listed in OWRD Exhibit 1, at page 57 as part of the NW¼ SE¼ of Section 19 that was included in the claim. Nor does the record show that any of the property in Lot 2, Section 19 was originally acquired by a Swamp Act deed. (Exs C4, C5; C-7; C-8; Ex. U 19 at 10, 11; OWRD Ex. 1 at 83.) (5) Likewise, also within Section 19, T39S R9E WM., 3.6 acres in the NW¼ NE¼, 6.4 acres in the NE¼ NW¼, and 6.8 acres in the NW¼ NW¼ - all above the meander line of Lots 8, 9 and 10, respectively - were not described in any of the Swamp Act deeds in the record. (Exs C5; C-7; C-8; Ex. U 19 at 10, 11; OWRD Ex. 1 at 83.) (6)

[4] While Lot 4 within the NW¼ SE¼ of Section 19 was conveyed to John Miller in the August 16, 1882 Swamp Act deed, the claimed portion (22.4 acres in Lot 3) of that area was not conveyed to John Miller as part of the deed. (Compare maps C3, C4, and C33 Ex. A.)

And finally, the ~~5.3~~ 4.8[5] acres in the SE¼ SE¼ of Section 25, T39S R8W and 2.7[6] acres in the NE¼ SE¼ of Section 25, T39S R8W were not described in any of the Swamp Act deeds in the record. (C3; C33 Ex. A) Taken all together, the properties that were not described in the July 5, 1882 and the August 16, 1882 Swamp Act deeds to John F. Miller add up to ~~202.4~~ 370.8 acres. ODFW's argument that acquisition by Swamp Act deed necessarily implies that the property was subject to natural irrigation and that a crop was harvested from it does not apply to that property. As discussed in more detail below, the February 14, 1882 Swamp Act deed to John F. Miller and the April 6, 1889 Swamp Act deed to E.C. Small do not necessarily imply that the property was subject to natural overflow and that the natural overflow was put to a beneficial use. Since the evidence ~~does not show~~ only shows beneficial use of water on property that was ~~not~~ conveyed under the July 5, 1882 and August 16, 1882 Swamp Act deeds to John F. Miller, ~~202.4~~ 370.8 acres must be subtracted from the 1070.9 acres tabulated by OWRD claimed, leaving ~~868.5~~ 700.1 acres allowable within the land subject to the claim.[7]

ODFW submitted testimony that the claimed Diversion Point #9 from the Ady Canal had not been used for a number of years. ~~and that a new diversion point between Diversion Points #2 and #3 had been developed to replace it.~~ Most of the places of use for water from Diversion Point #9 were within the parts not described in the Swamp Act deeds. Only ~~3.5~~ 0.5 and 0.8[8] acres within the allowable portion of the claim were described as irrigated from Diversion Point #9. ODFW has elected~~, however,~~ to designate Diversion Point #1 as the Diversion Point for the ~~3.5~~ 0.5 acres in

[5] Only the 0.5 acres in Lot 2 of this 5.3 acres was included in the August 16, 1882 Swamp Act deed to John F. Miller. The 4.8 acres in Lot 1 are not covered by that Swamp Act deed. (Compare maps C3, C4, and C33 Ex. A.)
[6] Only 0.8 acres in Lot 2 of the original 3.5 acres claimed is within the August 16, 1882 Swamp Act deed to John Miller. The 2.7 acres in Lot 1 are not covered by that Swamp Act deed (Compare maps C3, C4, and C33 Ex. A.)
[7] This conclusion is bolstered by Ex. C33 which includes as an attachment Exhibit A, a map showing the property described in the Swamp Act deeds. That map shows no property in either Section 30 or 36, except the NW ¼ NW ¼ Section 30, which is not included in the tabulation at Pages 57 through 65 of OWRD Ex. 1.
[8] These are the same parcels of land referred to in footnotes 5 and 6 respectively.

the SE¼ SE¼ Section 25, T39S R8E WM. ~~and not to include the new diversion point in the claim.~~

ii. *"THE PRE-1909 RIGHT" Paragraph 7 is modified as follows:*

ODFW is largely correct on both counts. The Swamp Act deeds can be ~~are~~ evidence that water was being beneficially used when the deeds were issued. As discussed in more detail below, whether or not Swamp Act deeds are evidence that water was being beneficially used depends on the details of the particular Swamp Act deed. Since the water is still being used to irrigate plants, there has been no change of use.

iii. *"THE PRE-1909 RIGHT" Paragraph 9 is replaced in its entirety as follows:*

While Swamp Act deeds can be evidence of reclamation and beneficial use, this depends on the circumstances in which the deeds were issued. The Swamp Land Act of 1870 ("1870 Act") required proof of reclamation in order to obtain a swamp land deed. 1870 General Laws of Oregon §4, p. 56. The definition of "reclamation" provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. Specifically, the 1870 Act treated land as reclaimed which had been "successfully cultivated in either grass, the cereals or vegetables for three years." *Id.* The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of $1 per acre. *Id.* at §3, p. 55. The Swamp Land Act of 1878 ("1878 Act") altered some of the provisions of the 1870 Act. An applicant under the 1870 Act could, under the terms of the 1878 Act, obtain a deed without proof of reclamation by payment of $2.50 per acre. 1878 General Laws of Oregon, §10, p. 46. Otherwise, an applicant under the 1870 Act would still need to submit proof of reclamation. An applicant making an application under the terms of the 1878 Act (i.e., making an initial application after the effective date of the 1878 Act) could obtain a deed by payment of a minimum of $1 per acre without proof of

reclamation. *Id.* at §4, p. 42). Applications under the terms of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 ("1887 Act") made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been "reclaimed or paid" by the effective date of the 1887 Act, with the exception that such applicants who were also "actual settlers on lands of 320 acres or less" and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. General Laws of 1887 §2, p. 10. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. *Id.* at §5, p. 9-10. Deeds issued under this provision were limited to 640 acres. *Id.* Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the 1878 Act (i.e., without requiring proof of reclamation). *Id.* The 1887 Act went into effect on February 16, 1887. *Id.*

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.[9]

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a

[9] The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than $2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for $2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the swamp land deeds submitted in this case, these principles mean that the two Swamp Act deeds issued to John F. Miller (July 5, 1882 and August 16, 1882) are sufficient evidence of reclamation and beneficial use. (Exs. C6; C7; C36 at 2; C44 at 17.) Swamp Act deeds issued to John F. Miller (February 10, 1882) and E.C. Small (April 6, 1889) are not sufficient evidence of reclamation and beneficial use. (Exs. C-5, C8.)

The July 5, 1882 Swamp Act deed is sufficient evidence of reclamation and beneficial use because, even though the total number of acres conveyed was less than 320, the minutes from the June 19, 1882 Board of State Land Commissioners note that the claim was made under the 1870 Act. (Ex. C44 at 17.)

The August 16, 1882 Swamp Act deed is sufficient evidence of reclamation and beneficial use because the total number of acres conveyed

was 2,149.61, well over 320 acres. (Ex. C7.) Furthermore, the land was conveyed for $1 per acre and the minutes from the August 12, 1882 Board of State Land Commissioners note that, "John F. Miller submitted proof of the reclamation of the hereinafter described swamp lands." (Ex. C17 at 29.)

The claimed lands covered by these two deeds would be eligible for priority dates as early as 1879, well before the 1900 priority date claimed by ODFW. As a result, the priority date for these lands is January 1, 1900.

The Swamp Act deed issued to John F. Miller on February 10, 1882 is not sufficient evidence of reclamation and beneficial use because the total number of acres conveyed was less than 320. (Ex. C5.) The claimed acres included on the February 10, 1882 Swamp Act deed are *not* discussed in the Board of State Land Commissioner's June 19, 1882, or August 12, 1882 minutes.

The Swamp Act deed issued to E.C. Small on April 6, 1889 is not sufficient evidence of reclamation because the date of the Swamp Act deed is after the effective date of the 1887 Act. (Ex. C8.) Further, as described below, the other evidence in the record fails to demonstrate a beneficial use of water for irrigation prior to 1909 by a preponderance of the evidence on the land conveyed to E.C. Small.

iv. "THE PRE-1909 RIGHT" Paragraphs 14-20 are replaced in their entirety as follows:

In this case the hearsay evidence is sufficient to provide some corroboration of the evidence of beneficial use provided by the two John F. Miller Swamp Act deeds. However, as described in detail below, the hearsay evidence is not sufficient to prove beneficial use for irrigation prior to 1909 on the two other categories of lands claimed (the claimed lands included within the February 14, 1882 John F. Miller Swamp Act

deed and the E.C. Small Swamp Act deed and the claimed lands not part of a Swamp Act Deed that were included in the conveyance from William Miller to Sarah Miller).

There is very limited evidence concerning the land included in the February 10, 1882 John F. Miller deed, the E.C. Small Swamp Act deed, and the land conveyed from William Miller to Sarah Miller. There are a number of statements concerning both natural overflow and beneficial use on Miller Island in general terms. Mr. Furber testified that "much" of Miller Island was subject to natural overflow. (Ex. C16 ¶ 7.) The History of Klamath County states that "[d]uring the spring, water would flood much of the island." (Ex. C38 at 2.) Barney Hooper's affidavit states that "[a]ll of Miller Island flooded." (Ex. C12 at 3). There is sufficient evidence to support the proposition that "much" of Miller Island was seasonally flooded prior to 1909.

With respect to beneficial use, Mr. Furber testified that "[b]efore the turn of the century, the entire island was used for haying and grazing. Most of the island was part of the land holding of John F. Miller and part of Miller's ranching operation." (Ex. C 16 ¶ 9.) Mr. Hooper's affidavit describes a conversation he had with someone named Jess Johnson, who said that that "in the late 1800s they [John Miller and his sons] put up meadow hay and ran cows on all the ground on Miller Island" (Ex. C12 at 3). There is no evidence, however, that the E.C. Small and Sarah Miller parcels were part of John F. Miller's ranching operation. Without more specific information concerning operations on land not owned by John F. Miller, the inference that John F. Miller only intended to make beneficial use of the lands that he owned is at least as persuasive as the inference that he intended to make beneficial use of water on the entirety of Miller Island, regardless of property ownership. The only statement that refers specifically to the E.C. Small or Sarah Miller parcels is Mr. Furber's testimony that "[it] is notable than land was reclaimed and farmed by Mr.

Miller, Mr. Logan and Mr. Small prior to the acquiring deeds from the state of Oregon in 1882 and 1889." (Ex. C17 at ¶ 7.) There is no indication in the record as to the basis for this statement, and without additional detail it is not treated as substantial evidence. Mr. Furber may well have been relying on an erroneous belief that reclamation would have required for E.C. Small to obtain his Swamp Land Deed.

The evidence is sufficient to support a possibility that the E.C. Small and Sarah Miller parcels were subject to natural overflow and beneficially used prior to 1909. The hearsay statements are not, however, sufficiently specific to prove the required elements by a preponderance of the evidence. It is just as possible that the E.C. Small and Sarah Miller parcels were not among the Miller Island lands subject to natural overflow, or not beneficially used prior to 1909. Because the claimants bear of the burden of proof with respect to pre-1909 development, the lack of specificity in the evidence means that the portions of the claimed place of use within the boundaries of the E.C. Small and Sarah Miller parcels must be denied.

Finally, it has been suggested that Claimant's predecessors unreasonably delayed the construction of works to more efficiently use the water. Under *In re Silvies River* construction of works was not necessary to appropriate a water right prior to 1909 where, as on at least part of the claimed lands, it was possible to make beneficial use of natural overflow. Finally, the claimed lands are now served by artificial diversion works rather than natural overflow, so any argument that the means of beneficial use by natural overflow should no longer be permissible on these lands is moot.

The preponderance of the evidence in the record in this case establishes that water was applied to beneficial use for irrigation on or before January 1, 1900 on 811.5 acres within the claimed property.

b. *The subsection entitled "THE KLAMATH PROJECT" is replaced in its entirety as follows:*

The determination of this claim does not require or depend in any way upon a determination of whether use of water under the claim interferes with the purposes of the Klamath Project. The relative rights of the Claimant and the Klamath Project will be regulated according to the doctrine of prior appropriation.

c. *The subsection entitled "SEASON OF USE" is replaced in its entirety as follows:*

The claim asserts a year-round season of use, describing flood-irrigation of the fields at various times, including mid-winter. There is insufficient evidence supporting the claim that a year-round season of use was developed prior to 1909. Consequently, the season of use is restricted to April 1 through October 31. The evidence pertaining to pre-1909 flooding patterns and beneficial uses of water is as follows. Lewis Furber made three statements relevant to this issue. First, he stated that "the land was overflowed by the Klamath River during the spring and other high water periods." (C17 ¶ 8.) Second, he stated that "the Klamath River would rise in the spring and naturally flood irrigate the Furber Property. * * *. The natural flooding would begin in early spring depending upon the snowpack and weather conditions. Usually by April, May, June, or July the water would begin to recede and they would begin grazing and haying the native grasses." (C14 ¶ 7.) Third, he referred to "periods of year round flooding" on Miller Island. (C47 ¶ 5.) In addition, Lanny Fujishin noted that, "the lower lands around Miller Island were naturally over flowed and flooded during the winter and spring." (C32 Ex. A at 3.) Although these statements are to a certain extent inconsistent, it is more likely than not that flooding of the property regularly occurred during the spring, and likely occurred from time to time during the winter or other periods. However, there is insufficient evidence that water was put to use prior to 1909 outside of the April 1 through October 31 period for the

purpose of irrigation (i.e., 'to promote growth or nourish crops or plants"). *See* OAR 690-300-0010(26). Finally, as described above, there is insufficient evidence of intent to develop a wildlife purpose of use on the claimed property prior to 1909. Consequently, a season of use of April 1 through October 31 is appropriate for both the recognized irrigation and wildlife uses.

d. The subsection entitled "CHANGE OF USE" is modified as described in subsections 7.d.i and 7.d.ii, below.

i. "CHANGE OF USE" Paragraph 3 is modified as follows:

While the portion of these definitions requiring artificial diversion of water is inapplicable to pre-1909 claims as a result of ~~belied by~~ the Supreme Court's opinion in *In re Silvies River*, the dictionary ~~common~~ definition of irrigation has in common with the OWRD definition that it is not limited to domestic crops or specific plants, but is based upon application of water to any plant to provide moisture for plant growth. The definition in the Klamath Compact, which is more limited than either of the other definition, is not controlling. It took effect in 1957, and there is no indication that it was intended to retroactively limit the scope of water rights developed prior to its enactment. Its persuasive authority is limited in this context, given that the OWRD definition applies statewide, and there is no compelling reason for a more limited definition as applied to pre-1909 rights in the Klamath Basin. ~~, as it took effect in 1957, so cannot be held to limit a water right with a priority of 1900.~~ Thus, from a definitional point of view, so long as water is intentionally applied to land in order to nurture plants that are desirable to the landowner, this would count as irrigation.

ii. The following paragraphs are added to the end of the "CHANGE OF USE" subsection:

ODFW claimed irrigation and wildlife habitat purposes of use, and specified rates associated with each use. The testimony demonstrates that

there is no meaningful difference in actual diversion and use practices as between the two claimed purposes.[10] Lanny Fujishin testified that "the claimed water rights are managed differently from year to year. As a result, the line between the two categories [irrigated or wildlife habitat] is really not that clear and we did not intend to imply that they constitute legally distinct uses. For example, we may soon plant barley in one wetlands area to set back bulrush and other emergent vegetation in that area." (C32 at ¶ 8.) Additionally, Ron Anglin explained in his affidavit that, while the ratio of land identified as irrigated for agriculture and land identified as irrigated for wildlife habitat changes from year to year, both categories still rely on irrigation for traditional agricultural and wildlife benefits. (C34 at ¶ 8.) He added that ODFW employs a moist soil management program which is dependent on seasonal drying and then reirrigating (or flooding) certain areas. (C34 at ¶ 10.) The crops in ODFW's wetland areas are native vegetation which are valuable feed for waterfowl. (*Id.*) Thus, it is evident that the water ODFW is using on any wetland or marsh areas within the claim area is consistent with irrigation use.

In its Closing Brief, ODFW characterized use on the claimed property as irrigation. As a result, OWRD treats the claim as an irrigation claim, and the recognized purpose of use for the claim is irrigation.[11]

e. *The following subsection entitled "CHANGED PLACE OF USE" is added to the "**OPINION**" section:*

CHANGED PLACE OF USE

KPWU contends that ODFW changed the place of use descriptions after submitting its January 29, 1991 Statement and Proof of Claim. (KPWU's

[10] ODFW has removed areas of open water from its claim.

[11] Under the circumstances in this case, this does not constitute an impermissible claim amendment. As described above, the "wildlife use" claimed and actually occurring on the claimed property overlaps with OWRD's definition of irrigation use. In addition, OWRD paid claim fees covering irrigation use on the entirety of the claimed property. (OWRD Ex. 1 at 5).

Exceptions to the Amended Proposed Order at 5.) ODFW admits that there has been some confusion about this issue (ODFW Post-Hearing Reply Brief at 22.) However, notwithstanding this confusion, there is sufficient evidence in the record to have put all contestants, including KPWU, on notice of all the areas subject to ODFW's claim. While the Statement and Proof of Claim that ODFW filed on January 29, 1991 did contain some errors and included the wrong map, there was sufficient evidence that existed at that point, prepared by OWRD, to put all contestants on notice of the entire claim area.

On ODFW's Statement and Proof of Claim, question 11 asks whether ODFW "accepts the maps which were prepared by the Water Resources Department as they relate to [ODFW's] claim?" (OWRD Ex. 1 at 4.) ODFW answered "yes" to this question. (*Id.*) The map and the accompanying place of use descriptions prepared by OWRD clearly identify all the areas included in ODFW's claim area that were incorporated into the ALJ's Amended Proposed Order. (OWRD Ex. 1 at 57-66).

OWRD's place of use descriptions, broken up by point of diversion, and OWRD's map existed before the deadline for filing claims. In Don Knauer's affidavit, he says that pages 57-65 of OWRD Exhibit 1 and page 66 of OWRD Exhibit 1, the map, "were prepared under my supervision * * * well before the taking of the claims." (C43 at ¶ 4.) He went on to say, "OWRD had already prepared the more detailed tabulations and mapping before the claim was filed." (C43 at ¶ 7.) Therefore, notwithstanding the confusion that ODFW created with the errors in its January 29, 1991 Statement and Proof of Claim, since it accepted OWRD's maps, which properly described the place of use descriptions and were prepared before the deadline, all claimants were on notice of the entire claim area and there was no impermissible claim amendment after the deadline.

Reasons for modifications: Based on the provisions of the applicable Swamp Land Acts, the February 10, 1882 and April 6, 1889 Swamp Act deeds cannot be accepted as beneficial use of water without additional evidence. While there is some evidence in the record about haying, grazing, and ranching throughout Miller Island and comments in affidavits about natural overflow covering all of Miller Island, this evidence is

generalized and does not refer with any level of detail to the E.C. Small parcel or the lands not covered by a Swamp Act deed that are part of the William Miller to Sarah Miller conveyance.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues Presented" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, above.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.8, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 186. Consistent with Sections A.6, A.7, and A.8, above, the outcome of the Order has been modified to limit the claim to the approval of 700.1 acres.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 186 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 186

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 39 S, R 9 E & T 39 S, R 8 E

CLAIMANT: OREGON DEPARTMENT OF FISH AND WILDLIFE
1850 MILLER ISLAND RD W
KLAMATH FALLS, OR 97603

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 700.1 ACRES

RATE OF USE:
17.5 CUBIC FEET PER SECOND (CFS), MEASURED AT THE POINT OF DIVERSION AS FOLLOWS:

0.03 CFS ON 1.3 ACRES FROM MILLER ISLAND REFUGE POD #1
1.56 CFS ON 62.2 ACRES FROM MILLER ISLAND REFUGE POD #2
2.70 CFS ON 108.1 ACRES FROM MILLER ISLAND REFUGE POD #3

1.38 CFS ON 55.5 ACRES FROM MILLER ISLAND REFUGE POD #4
1.57 CFS ON 62.6 ACRES FROM MILLER ISLAND REFUGE POD #5
1.97 CFS ON 78.9 ACRES FROM MILLER ISLAND REFUGE POD #6
1.01 CFS ON 40.5 ACRES FROM MILLER ISLAND REFUGE POD #7
7.28 CFS ON 291.0ACRES FROM MILLER ISLAND REFUGE POD #8

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:

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 31

DATES OF PRIORITY:

JULY 5, 1879: IRRIGATION OF 68.4 ACRES (AS LISTED BELOW) FOR A TOTAL OF 1.71 CFS OF WATER

AUGUST 16, 1879: IRRIGATION OF 631.7 ACRES (AS LISTED BELOW) FOR A TOTAL OF 15.79 CFS

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q
Miller Island Refuge POD 1	39 S	9 E	WM	19	NW NE
Miller Island Refuge POD 2	39 S	9 E	WM	19	NE NW
Miller Island Refuge POD 3	39 S	8 E	WM	24	NE NE
Miller Island Refuge POD 4	39 S	8 E	WM	24	SW NE
Miller Island Refuge POD 5	39 S	8 E	WM	24	SE NW
Miller Island Refuge POD 6	39 S	8 E	WM	23	NE SE
Miller Island Refuge POD 7	39 S	8 E	WM	26	NE NE
Miller Island Refuge POD 8	39 S	9 E	WM	26	SW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	23	NE SE	3	0.1	POD 6	JULY 5, 1879
39 S	8 E	WM	23	SE SE	3	17.2	POD 6	
39 S	8 E	WM	24	SW NE	5	26.7	POD 4	
39 S	8 E	WM	24	NW SW	7	24.4	POD 6	
39 S	8 E	WM	24	SE NE		22.3	POD 2	AUGUST 16, 1879
39 S	8 E	WM	24	SW SW		37.2	POD 6	
39 S	8 E	WM	24	SE SW		2.7	POD 4	
39 S	8 E	WM	24	SE SW		12.6	POD 5	
39 S	8 E	WM	24	NE SE		8.0	POD 2	
39 S	8 E	WM	24	NE SE		13.3	POD 3	
39 S	8 E	WM	24	NW SE		22.7	POD 4	
39 S	8 E	WM	24	NW SE		1.5	POD 5	
39 S	8 E	WM	24	SW SE		3.4	POD 4	

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	Priority Date
39 S	8 E	WM	24	SW SE		35.1	POD 5	AUGUST 16, 1879
39 S	8 E	WM	24	SE SE		38.8	POD 3	
39 S	8 E	WM	25	NE NE		1.0	POD 5	
39 S	8 E	WM	25	NW NE		7.1	POD 5	
39 S	8 E	WM	25	SW NE		5.3	POD 5	
39 S	8 E	WM	25	NW NW		22.3	POD 7	
39 S	8 E	WM	25	NW NW		15.7	POD 8	
39 S	8 E	WM	25	SW NW		0.8	POD 7	
39 S	8 E	WM	25	SW NW		37.5	POD 8	
39 S	8 E	WM	25	NW SW		5.7	POD 8	
39 S	8 E	WM	25	SW SW		24.8	POD 8	
39 S	8 E	WM	25	NE SE	2	0.8	POD 1	
39 S	8 E	WM	25	SE SE	2	0.5	POD 1	
39 S	8 E	WM	26	SE NE		17.4	POD 7	
39 S	8 E	WM	26	SE NE		20.1	POD 8	
39 S	8 E	WM	26	NE SW	8	22.7	POD 8	
39 S	8 E	WM	26	SW SW	10	2.0	POD 8	
39 S	8 E	WM	26	SE SW	9	6.3	POD 8	
39 S	8 E	WM	26	NE SE		33.2	POD 8	
39 S	8 E	WM	26	NW SE	11	26.5	POD 8	
39 S	8 E	WM	26	SW SE	12	18.2	POD 8	
39 S	8 E	WM	26	SE SE		37.5	POD 8	
39 S	8 E	WM	35	NE NE	9	40.8	POD 8	
39 S	9 E	WM	19	SW NE		0.7	POD 2	
39 S	9 E	WM	19	SW NW	11	30.1	POD 2	
39 S	9 E	WM	19	NE SW		1.0	POD 3	
39 S	9 E	WM	19	NW SW	12	1.1	POD 2	
39 S	9 E	WM	19	NW SW	12	17.3	POD 3	
39 S	9 E	WM	19	SW SW	13	36.2	POD 3	
39 S	9 E	WM	19	SE SW		1.5	POD 3	

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 RENOLD R. AND ELSIE E. PASSIEN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 187

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 28, 1990, RENOLD R. AND ELSIE E. PASSIEN (Claimants) timely submitted a Statement and Proof of Claim (Claim 187) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 187 was submitted for a total 0.15 cubic feet per second (cfs) of water from an unnamed spring, tributary to the Klamath River, being 0.01 cubic foot per second for domestic use and 65 gallons per minute (0.14 cubic foot per second) for irrigation of 11.7 acres. The claimed season of use is "April - October." The claimed priority date is 1901.

3. Item 13 of the Statement and Proof of Claim incorporates "Sheet A," a copy of a deed for the portion of lands in Section 27 appurtenant to Claim 187 from the State of Oregon to Orson A. Stearns, "STATE WARRANTY DEED, VOL. 1, PAGE 350 (June 24, 1878) (Claim # 187, Page 005).

4. RENOLD R. PASSIEN AND ELSIE E. PASSIEN signed the Statement and Proof of Claim for Claim 187 attesting that the information contained in the claim is true.

5. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 187. The report also includes the statement, "The Passien's explained that they were told by a neighbor that their property was part of the original Van Valkenberg homestead. They did not know just when the water use would have started, however they have found that some of the old buildings have newspaper dated 1901 plastered to walls and ceilings. . . . The Passiens understood

that the house they are living in on this property was the original house for the homestead." (Claim 187, WIP Page 00014).

6. On November 19, 1998, the Claimants supplemented information to Claim 187 and clarified that the domestic season of use is "12 months a year" (Claim # 187, Page 009).

7. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved.

8. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3177 to the Claim and/or Preliminary Evaluation of Claim 187.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 32.

10. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3177. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).

11. On February 13, 2002, Contest 3177 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

12. Based on the sworn statements in Claim 187, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 187 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 187

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E

CLAIMANT: RENOLD R. AND ELSIE E. PASSIEN
8910 HWY 66
KLAMATH FALLS OR 97601

SOURCE OF WATER: UNNAMED SPRING, tributary to the KLAMATH RIVER

PURPOSE or USE:

DOMESTIC; AND

IRRIGATION OF 11.7 ACRES.

RATE OF USE:

0.15 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.01 CFS FOR DOMESTIC USE AND 0.14 CFS FOR IRRIGATION.

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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE:

Use	Period
Domestic	Jan 1 - December 31
Irrigation	April 1 - October 31

DATE OF PRIORITY: DECEMBER 31, 1901

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	8 E	WM	27	NW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
39 S	8 E	WM	27	NW NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 E	WM	22	SW SE	5.70
39 S	8 E	WM	27	NW NE	6.00

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JOHN W. POWELL AND BARBARA J. POWELL	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 188

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 October 15, 1990, JOHN W. POWELL AND BARBARA J. POWELL (Claimants) timely submitted a Statement and Proof of Claim (Claim 188) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 188 was submitted for 0.132 cubic foot per second of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.3 acres with a season of use "approx. May 1 thru Oct." The claimed priority date is 1873.

3. Item 4 of the Statement and Proof of Claim includes the statement: "Land was purchased for farming Oct 26, 1872[;] continuous use and irrigation ever since." (Claim # 188, Page 001).

4. Item 13 of the Statement and Proof of Claim incorporates a statement signed by Esther Kerns Johnston which states in pertinent part: "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 188, Page 017).

5. JOHN W. POWELL signed the Statement and Proof of Claim for Claim 188 attesting that the information contained in the claim is true.

6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 188 (Claim 188, WIP Pages 00011-00012).

7. On May 4, 1999, the Claimants supplemented information to Claim 188 by providing a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 188, Page 064).

8. On May 4, 1999, the Claimants amended Claim 188 by providing clarification that only one diversion point (located in Lot 4, Block 2) rather than two supplies water to the claimed place of use (Claim # 188, Page 035).

9. On May 4, 1999, the Claimants supplied a map for Claim 188 showing 1.3 acres of irrigation (Claim 188, Page 036).

10. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres than claimed and a longer season of use than claimed.

11. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3178 to the Claim and/or Preliminary Evaluation of Claim 188.

12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 33.

13. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3178. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).

14. On February 13, 2002, Contest 3178 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

15. Based on the sworn statements in Claim 188, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 188 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 188

CLAIM MAP REFERENCE: CLAIM 188, PAGE 036

CLAIMANT: JOHN W. POWELL
BARBARA L. POWELL
PO BOX 16
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE: IRRIGATION OF 1.3 ACRE.

RATE OF USE:
0.03 CUBIC FOOT PER SECOND 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 4 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
39 S	8 E	WM	31	NE SW	2500	1.2
39 S	8 E	WM	31	NW SW		0.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 JESSIE L. PUCKET	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 189

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 October 15, 1990, JESSIE L. PUCKET (Claimant) timely submitted a Statement and Proof of Claim (Claim 189) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 189 was submitted for 50 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 0.7 acres with a season of use "May 1 through September." The claimed priority date is 1873.

3. JESSIE L. PUCKET signed the Statement and Proof of Claim for Claim 189 attesting that the information contained in the claim is true.

4. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 189 (Claim 189, WIP Pages 00010 - 00011).

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 claim was denied for not having established the required Pre-1909 elements.

6. On April 19, 2000, the Claimant timely filed Contest 19 to the Preliminary Evaluation of Claim 189.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3179 to the Claim and/or Preliminary Evaluation of Claim 189.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 34.

9. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3179. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).

10. On March 6, 2002, the Claimant and OWRD executed one SETTLEMENT AGREEMENT (Settlement Agreement) which resolved the remaining contest (Claimant's Contest 19) to Claim 189.

11. On June 11, 2002, documents (Exhibit B) establishing the elements of a pre-1909 claim were entered into evidence in Case 34 and the case was dismissed. *See* UNOPPOSED MOTION AND ORDER TO ENTER DOCUMENTS INTO EVIDENCE AND DISMISS CASE AND REFER CASE TO THE ADJUDICATOR (June 11, 2002).

12. Based on the OWRD Investigation Map (T 39 S, R 8 E, Insert C), the 0.7 acre claimed is within Lots 3 and 4 in Block 2 of the Riverside Addition to Keno.

13. 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 "May 1 through September."

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant and OWRD 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 13, above); the irrigation season recognized herein is consistent the Claimant's original claim.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 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 duty for irrigation, being 3.5 acre-feet per acre, and 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 189 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 189

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANT: JESSIE L. PUCKETT
2815 TAYLOR
EUGENE, OR 97405

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE: IRRIGATION OF 0.7 ACRE.

RATE OF USE:

0.02 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - SEPTEMBER 30

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Remarks
39 S	8 E	WM	31	SW SW	1	Lot 4 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	SW SW	3300	0.7	Lots 3 and 4 in Block 2 of Riverside Addition to Keno
39 S	8 E	WM	31	SE SW			

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 6-GLD TRUST # 553-64-6607; JOHN BATZER, TRUSTEE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 190

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 October 17, 1990, LEONA BELL PUCKETT timely submitted a Statement and Proof of Claim (Claim 190) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 190 was submitted for 96 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.6 acres with a season of use "May – October (sometimes in April)." The claimed priority date is 1873.

3. Item 4 of the Statement and Proof of Claim includes the statement: "Land was purchased for farming Oct 26, 1872 with continuous use of farmland and irrigation ever sence [sic]." (Claim # 190, Page 001).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit A," a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 190, Page 008).

5. Item 14 of the Statement and Proof of Claim incorporates "Exhibit D," a statement signed by Esther Kerns Johnston which states in pertinent part: "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 190, Page 014).

6. LEONA B. PUCKETT signed the Statement and Proof of Claim for Claim 190 attesting that the information contained in the claim is true.

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 190 (Claim 190, WIP Pages 00013-00014).

8. On June 13, 1997, the title to the property appurtenant to Claim 190 was transferred to 6-GLD TRUST # 553-64-6607, JOHN BATZER, TRUSTEE (Claimant) from LEONA BELL PUCKETT. *See* COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 18702.

9. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than claimed and a longer season of use than claimed.

10. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3180 to the Claim and/or Preliminary Evaluation of Claim 190.

11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 35.

12. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3180. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).

13. On February 13, 2002, Contest 3180 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST (Feb. 13, 2002).

14. Based on the sworn statements in Claim 190, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

15. Based on the OWRD Investigation Map (T 39 S, R 8 E, Insert C), 1.0 acre is irrigated within Lots 3, 4 and 5 in Block 1 of the Riverside Addition to Keno. Because Lots 3, 4 and 5 appear to be identical in size, OWRD finds 0.3 acre irrigated in Lot 5.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 190 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 190

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANT: 6-GLD TRUST # 553-64-6607
JOHN BATZER, TRUSTEE
5150 MAE ANNE AVE, SUITE 213-213
RENO, NV 98523

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:
IRRIGATION OF 1.6 ACRES, BEING 0.3 ACRE WITHIN LOT 5 IN BLOCK 1 OF RIVERSIDE ADDITION TO KENO, AND 1.3 ACRES WITHIN LOTS 8, 9 AND THE W ½ LOT 7 IN BLOCK 2 OF RIVERSIDE ADDITION TO KENO.

RATE OF USE:
0.04 CUBIC FOOT PER SECOND 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 7 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	NE SW	2800	0.3	Lot 5 in Block 1 of Riverside Addition to Keno
39 S	8 E	WM	31	NW SW			
39 S	8 E	WM	31	NW SW	2800	1.3	Lots 8, 9, and W ½ Lot 7 in Block 2 of Riverside Addition to Keno
39 S	8 E	WM	31	SW SW			

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 TRUST #14, J. WONG, TRUSTEE; and #24 QUI-NCY TRUST, BONG-GAT-WONG, TRUSTEE	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 191

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 October 17, 1990, RICHARD EDWARD PUCKETT timely submitted a Statement and Proof of Claim (Claim 191) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 191 was submitted for 72 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.3 acres with a season of use "May – Oct." The claimed priority date is 1873.

3. Item 4 of the Statement and Proof of Claim includes the statement: "Land was purchased for farming Oct 26, 1872 with continuous use of farmland and irrigation ever sence [sic]." (Claim # 191, Page 001).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit A," a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 191, Page 006).

5. Item 14 of the Statement and Proof of Claim incorporates "Exhibit D," a statement signed by Esther Kerns Johnston which states in pertinent part: "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 191, Page 012).

6. RICHARD E. PUCKETT signed the Statement and Proof of Claim for Claim 191 attesting that the information contained in the claim is true.

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 191 (Claim 191, WIP Pages 00010-00011).

8. On February 13, 1998, the title to property associated with Claim 191, located in Lot 5, Block 2, Riverside Addition to Keno, was transferred to TRUST # 14, J. WONG, TRUSTEE. *See* TRUSTEE'S QUIT CLAIM DEED, COUNTY OF KLAMATH, VOL. M98, PAGE 6306.

9. On February 13, 1998, the title to property also associated with Claim 191, located in Lot 6, and the E ½ Lot 7, Block 2, Riverside Addition to Keno, was transferred to the #24 QUI-NCY TRUST, BONG-GAT-WONG, TRUSTEE (Claimant). *See* QUIT CLAIM DEED TO TRUSTEE, COUNTY OF KLAMATH, VOL. M98, PAGE 5325.

10. OWRD understands TRUST #14, J. WONG, TRUSTEE and #24 QUI-NCY TRUST, BONG-GAT-WONG, TRUSTEE to be Co-Claimants in Claim 191.

11. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than claimed and a longer season of use than claimed.

12. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3181 to the Claim and/or Preliminary Evaluation of Claim 191.

13. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 36.

14. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3181. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).

15. On February 12, 2002, Contest 3181 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 12, 2002).

16. Based on the sworn statements in Claim 191, along with the field inspection report, the following findings are made:

    a. The Co-Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Co-Claimants created a diversion, where necessary, to divert water from its natural source.

c. The Co-Claimants applied water to beneficial use within a reasonable time.

17. Based on the OWRD Investigation Map (T 39 S, R 8 E, Insert C), 1.0 acre is irrigated within Lots 3, 4 and 5 in Block 1 of the Riverside Addition to Keno. Because Lots 3, 4 and 5 appear to be identical in size, OWRD finds 0.3 acre irrigated in Lot 5.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 191 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 191

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANTS: TRUST #14, J. WONG, TRUSTEE; and
#24 QUI-NCY TRUST, BONG-GAT-WONG, TRUSTEE
5150 MAE ANNE AVE, SUITE 213-213
RENO, NV 89523

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:
IRRIGATION OF 1.3 ACRES WITHIN LOTS 5, 6, THE E ½ LOT 7, IN BLOCK 2 OF THE RIVERSIDE ADDITION OF KENO.

RATE OF USE:
0.03 CUBIC FOOT PER SECOND 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 6 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	SW SW	3400	0.3	Lot 5 in Block 2 of Riverside Addition to Keno
39 S	8 E	WM	31	SE SW			
39 S	8 E	WM	31	NE SW	3500	1.0	Lot 6 and E ½ Lot 7 in Block 2 of Riverside Addition to Keno
39 S	8 E	WM	31	NW SW			
39 S	8 E	WM	31	SW SW			
39 S	8 E	WM	31	SE SW			

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 DONALD AND BETTY WAGNER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 192

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 December 6, 1990, DONALD AND BETTY WAGNER timely submitted a Statement and Proof of Claim (Claim 192) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 192 was submitted for 4000 gallons per hour of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.0 acres with a season of use "June 1st Sept. 30." The claimed priority date is "October 26, 1872".

3. Item 14 of the Statement and Proof of Claim incorporates "Exhibit D," a statement signed by Esther Kerns Johnston which states in pertinent part: "To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800." (Claim # 192, Page 011).

4. DONALD WAGNER AND BETTY WAGNER signed the Statement and Proof of Claim for Claim 192 attesting that the information contained in the claim is true.

5. In 1999, a field inspection report, including a map, was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 192 (Claim 192, Pages 036-039).

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 claim was approved, but for a smaller quantity of water than claimed.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3182 to the Claim and/or Preliminary Evaluation of Claim 192.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 37.

9. On January 2, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3182. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 2, 2002).

10. On February 13, 2002, Contest 3182 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

11. Based on the sworn statements in Claim 192, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 192 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 192

CLAIM MAP REFERENCE: CLAIM # 192, PAGE 037

CLAIMANT: DONALD AND BETTY WAGNER
PO BOX 34
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:

IRRIGATION OF 1.0 ACRES WITHIN LOT 10 IN BLOCK 2 OF THE RIVERSIDE ADDITION OF KENO.

RATE OF USE:

0.03 CUBIC FOOT PER SECOND, 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: JUNE 1 - SEPTEMBER 30

DATE OF PRIORITY: OCTOBER 26, 1872

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Location
39 S	8 E	WM	31	NW SW	SOUTH 37 DEGREES WEST, 1578 FEET FROM W ¼ CORNER, SECTION 31

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	NW SW	3600	1.0	Lot 10 in Block 2 of Riverside Addition to Keno

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 ALLAN MOATES; HAROLD AND MARIA MOATES, TRUSTEES, PENTAIL CO; COLLINS PRODUCTS, LLC.	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 193

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE AMENDED PROPOSED ORDER

1. Claim 193 (Claimants: ALLAN MOATES; HAROLD AND MARIA MOATES, TRUSTEES, PENTAIL CO; COLLINS PRODUCTS LLC.) and its associated contests (3183, 3838, and 4180) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 130.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 193 on January 15, 2004.

3. Exceptions were filed to the Proposed Order by the United States of America, two days after the exception filing deadline.[1]

4. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 193.

5. On July 21, 2011, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify the season to April 1 through October 31 because the season of use in the June 2, 2006 Proposed Order exceeded the claimed season of use, and to correct and clarify the location descriptions of claimed acreage. The Amended Proposed Order replaced the 2004 Proposed Order in its entirety.

[1] The Proposed Order was served on all parties on January 15, 2004. Per OAR 137-003-0650, notice was given in the Proposed Order that "parties may file exceptions to this Order with the Adjudicator within 30 days of service of the Order."

6. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by United States of America. Responses to the United States' Exceptions were filed by Claimant Allan Moates within the response filing deadline.

7. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 193, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

8. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. The claimed place of use is subject to natural subirrigation from the Klamath River. The use of water by natural subirrigation is a privilege only, and does not constitute a water right. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property. This may not be altered by the use of any physical means to modify the manner in which natural subirrigation occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural subirrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. This privilege as described herein does not constitute a water right; as such, OWRD will not issue a water right certificate for this privilege described in this paragraph.

4. Based on the file and record herein, IT IS ORDERED that Claim 102 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 193

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 9 E

CLAIMANTS: ALLAN MOATES
7100 HWY 97 S
KLAMATH FALLS OR 97601

HAROLD AND MARIA MOATES, TRUSTEES
PENTAIL CO.
1644 EVERGREEN DR
CARSON CITY, NV 89703

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION OF 40.6 ACRES FROM A POINT OF DIVERSION

RATE OF USE:

1.02 CUBIC FEET PER SECOND (CFS) 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:

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 6, 1875

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
39 S	9 E	WM	18	SE SE	11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	9 E	WM	18	SE SE	11	4.5
39 S	9 E	WM	19	NE NE	7	10.6
39 S	9 E	WM	19	NW NE	8	2.2
39 S	9 E	WM	19	SE NE	1	5.7
39 S	9 E	WM	19	SE NE	6	13.1
39 S	9 E	WM	19	NE SE	2	4.5

FURTHER LIMTATIONS:

THE RIGHT TO USE WATER IS LIMITED BY THE PRINCIPLE OF BENEFICIAL USE WHEN THE AUTHORIZED PLACE OF USE IS SUBJECT TO SUBIRRIGATON FROM THE SAME SOURCE.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

For Claim 194:

See the PARTIAL ORDER OF DETERMINATION FOR CASE 003

Claim 194 was consolidated with Case 003.

All Claims included in the PARTIAL ORDER OF DETERMINATION FOR CASE 003:

194, 211, 285, 289, 290, 291,292, 293, 294, 295, 296, 297, 298,299, 312, 317, 321, 322, 323, 324

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 TED T. AND VELMA B. MARTIN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 195

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 14, 1990, TED T. AND VELMA B. MARTIN (Claimants) timely submitted a Statement and Proof of Claim (Claim 195) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 195 was submitted for a total 0.04 cubic feet per second (cfs) of water from "Klamath Lake via Klamath Irrigation District," tributary to the Klamath River, for irrigation of 1.3 acres with a season of use "April 15 – October 15." The claimed priority date is 1905.

3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit 1," a copy of EXCESS LAND TRUST DEED No. 49 (Nov. 15, 1905) (Claim # 195, Page 010 - 011), and "Exhibit 2," a copy of STOCK SUBSCRIPTION AND CONTRACT NO. 588 (Nov. 15, 1905) (Claim # 195, Page 012). These exhibits document an exchange whereby the landowner entrusted land appurtenant to Claim 195 to Klamath Water Users Association for the purpose of developing irrigation on these same lands according to provisions under the Reclamation Act of 1902. Subsequently, the Klamath Water Users Association released and quit claimed to the landowners within the Klamath Irrigation District, land appurtenant to Claim 195. *See* RELEASE OF STOCK SUBSCRIPTIONS AND CONTRACTS AND OF EXCESS LAND TRUST DEEDS, # 2873 (August 15, 1932) (Claim # 195, Page 016).

4. Item 13 of the Statement and Proof of Claim incorporates "Exhibit 3," a copy of an AGREEMENT TO CONVEY (August 31, 1906) (Claim # 195, Page 013). This exhibit documents that under the Klamath Project, pursuant to the Reclamation Act, the

landowner granted the United States the right to enter, construct and operate irrigation ditches over and across these lands, "substantially over and along the lines of said canals or ditches as the same are now located and staked out over and across said premises."

5. Item 13 of the Statement and Proof of Claim also incorporates "Exhibit 4," a copy of a WATER RIGHT APPLICATION made under the Reclamation Act of 1902. (May 2, 1912) for irrigation of lands appurtenant to Claim 195. (Claim # 195, Page 015).

6. TED T. MARTIN AND VELMA B. MARTIN signed the Statement and Proof of Claim for Claim 195 attesting that the information contained in the claim is true.

7. In 1987, a field inspection report was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 195 (Claim 195, Page 006).The report indicates that water is delivered via Klamath Irrigation District (K.I.D.) as part of the U.S.B.R. Klamath Project.

8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved but for a smaller quantity of water than claimed.

9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3185 to the Claim and/or Preliminary Evaluation of Claim 195.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 38.

11. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3185. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).

12. On February 13, 2002, Contest 3185 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

13. Based on the sworn statements in Claim 195, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 195 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 195

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 9 E, INSERT 10CD

CLAIMANT: TED T. AND VELMA B. MARTIN
4443 AUSTIN ST.
KLAMATH FALLS OR 97603

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER

PURPOSE or USE:
IRRIGATION OF 1.3 ACRES WITHIN LOTS 58, 61, 62, AND 63 OF CASITAS.

RATE OF USE:
0.03 ACRE-FEET 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 15 - OCTOBER 15

DATE OF PRIORITY: NOVEMBER 15, 1905

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	SW NE	8	Klamath Irrigation District - Canal "A"

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Remarks
39 S	9 E	WM	10	SE SW	1.3	Within Lots 58, 61, 62 and 63 of Casitas

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KATINA AVGERIS	)))	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 196

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 25, 1991, KATINA AVGERIS (Claimant) timely submitted a Statement and Proof of Claim (Claim 196) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 196 was submitted for a total of 0.86 cubic feet per second (cfs) of water, being 0.2 cfs for irrigation of 7.9 acres with an April through November season of use, 0.04 cfs for domestic use, 0.62 cfs for manufacturing, and livestock watering of 4 head. The claimed season of use for domestic and manufacturing and livestock watering is "12 months per year." The claimed sources of water are Cottonwood Creek and two springs, all tributary to the Klamath River. The claimed priority date is August 1882.

3. Item 4 of the Statement and Proof of Claim states that August 1882 is the "date when water use began." (Claim # 196, Page 001).

4. The Claimant did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.

5. KATINA AVGERIS signed the Statement and Proof of Claim for Claim 196 attesting that the information contained in the claim is true.

6. On July 30, 1999, the KATINA AVGERIS timely amended Claim 196 as follows: (1) reduced the total quantity of water claimed to 0.11 cfs, being 0.09 cfs for irrigation (specified at a rate of 1/80 of one cfs per acre) and 0.02 cfs for domestic uses, (2) reduced

the number of acres claimed for irrigation to 7.0, and (3) deleted the portion of the claim pertaining to manufacturing and livestock watering. *See* CLAIM OF BENEFICIAL USE AND SITE REPORT KLAMATH ADJUDICATION NO. 196 & CERTIFICATE NO. 11106 (July 30, 1999) (Claim # 196, Pages 42 – 44).

7. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved [as amended].

8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 196.

9. Based on the sworn statements in Claim 138, including the July 30, 1999 amendment, the following findings are made:

   a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

   b. The Claimant created a diversion, where necessary, to divert water from its natural source.

   c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. The rate for irrigation is 1/80 cubic foot per second per acre as amended on July 30, 1999.

4. Based on the file and record herein, IT IS ORDERED that Claim 196 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 196

CLAIM MAP REFERENCE: CLAIM # 196, PAGES 45 - 47

CLAIMANT: KATINA AVGERIS; C/O STEVE AVGERIS
1700 COLESTEIN RD
ASHLAND OR 97520

SOURCE OF WATER:
COTTONWOOD CREEK, SPRING 1, and SPRING 2, all tributary to the KLAMATH RIVER

PURPOSE or USE:
DOMESTIC FOR THREE DWELLINGS FROM SPRING 1, AND

IRRIGATION OF 7.0 ACRES FROM COTTONWOOD CREEK AND SPRING 2.

RATE OF USE:
0.11 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.02 FOR DOMESTIC USE FROM SPRING 1, AND 0.09 CFS FOR IRRIGATION FROM COTTONWOOD CREEK AND SPRING 2.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/80 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE:

Use	Period
Domestic	January 1 - December 31
Irrigation	April 1 - November 30

DATE OF PRIORITY: AUGUST 31, 1882

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
Cottonwood Creek	40 S	1 E	WM	36	NW NW	180 FEET SOUTH AND 1570 FEET WEST FROM N1/4 CORNER, SECTION 36	Irrigation Only
Spring 1	40 S	1 E	WM	36	NW NW	100 FEET SOUTH AND 1550 FEET WEST FROM N1/4 CORNER, SECTION 36	Domestic Use Only
Spring 2	40 S	1 E	WM	36	NE NW	1050 FEET SOUTH AND 1020 FEET WEST FROM N1/4 CORNER, SECTION 36	Irrigation Only

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC FROM SPRING 1				
Twp	Rng	Mer	Sec	Q-Q
40 S	1 E	WM	36	NE NW

IRRIGATION FROM COTTONWOOD CREEK AND SPRING 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	1 E	WM	36	NE NW	5.7
40 S	1 E	WM	36	SE NW	1.3

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 BENJAMIN STOTT	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 197

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 October 22, 1990, RICHINLI COMPANY, INC. BY RICHARD POPE, PRESIDENT, timely submitted a Statement and Proof of Claim (Claim 197) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 197 was submitted for a total of 0.66 cubic feet per second (cfs) of water from Middle Fork Cottonwood Creek, a tributary of East Fork Cottonwood Creek, for irrigation of 26.3 acres, with a season of use "May through October." The claimed priority date is 1854.

3. RICHARD POPE signed the Statement and Proof of Claim for Claim 197 attesting that the information contained in the claim is true.

4. According to the Jackson County Assessor's records title to the property associated with Claim 197 was subsequently acquired by BENJAMIN STOTT (Claimant). (Claim # 197, WIP, Page 00014).

5. In 1980, an OWRD field inspection report was prepared describing the present use of water on the property substantially as stated in Claim 197 (Claim # 197, Page 006). The report also includes the statement, "Their purpose was to indicate that there was use of the meadows for pasture for the stock during the time of the stage lines." According to information included in the report the stage lines were operating from 1854 to1887.

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 claim was approved.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 197.

8. Based on the sworn statements in Claim 138, along with the field inspection report, the following findings are made:

   a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

   b. The Claimant created a diversion, where necessary, to divert water from its natural source.

   c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 197 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 197

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 2 E

CLAIMANT: BENJAMIN STOTT
155 STRAWBERRY LANE
ASHLAND OR 97520

SOURCE OF WATER:
MIDDLE FORK COTTONWOOD CREEK, tributary to EAST FORK COTTONWOOD CREEK

PURPOSE or USE: IRRIGATION OF 26.3 ACRES.

RATE OF USE:

0.66 CUBIC FOOT PER SECOND 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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1854

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
40 S	2 E	WM	31	SW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	2 E	WM	31	SW NW		5.0
40 S	2 E	WM	31	SE NW	6	1.2
40 S	2 E	WM	31	NE SW	7	6.1
40 S	2 E	WM	31	NW SW		12.8
40 S	2 E	WM	31	SW SW		0.4
40 S	2 E	WM	31	SE SW	8	0.8

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 the UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 198

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 30, 1991, JOHN M. AND MARILYN MOSBY timely submitted a Statement and Proof of Claim (Claim 198) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).

2. Claim 198 was submitted for a total 3.98 cubic feet per second (cfs) of water from Jenny Creek, a tributary of the Klamath River, for irrigation of 220 acres with incidental livestock watering, and with a season of use April to October. The claimed priority date is "beneficial use of water since 1890."

3. JOHN M. MOSBY AND MARILYN MOSBY signed the Statement and Proof of Claim for Claim 198 attesting that the information contained in the claim is true.

4. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 198 (Claim 198, WIP Page 00019).

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 claim was approved, but for fewer acres than claimed and with a longer season of use than claimed.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3186 to the Claim and/or Preliminary Evaluation of Claim 198.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3409: 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 Pritchard[2], Don Vincent[3], 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. On May 8, 2000, the United States of America timely filed Contest 3840 to the Claim and/or Preliminary Evaluation of Claim 198.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4182 to the Claim and/or Preliminary Evaluation of Claim 198.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 131.

11. On December 23, 2002, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contest 3186. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT (Dec. 23, 2002).

12. On February 13, 2003, the Klamath Tribes voluntarily withdrew Contest 4182, the remaining contest to Claim 198. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Feb. 13, 2003).

13. On April 14, 2003, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3186. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (April 14, 2003).

14. On June 30, 2003, the claim was transferred to the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT (BLM) (Claimant). *See* CHANGE OF OWNERSHIP FORM (June 30, 2003).

15. On September 15, 2003, the United States of America withdrew Contest 3840. *See* WITHDRAWAL OF CONTEST BY UNITED STATES OF AMERICA (Sept. 15, 2003).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3409 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3409 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3409 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

16. On May 7, 2004, OWRD, the Claimant (BLM), and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving all remaining contests to Claim 198.

17. On May 12, 2004, the Adjudicator withdrew Case 131 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant (BLM), and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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 198 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 198

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 4 E

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
3040 BIDDLE RD
MEDFORD, OR 97504

SOURCE OF WATER: JENNY CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE:
IRRIGATION OF 209 ACRES WITH INCIDENTAL LIVESTOCK WATERING, BEING 140.0 ACRES IRRIGATED FROM POD 1 AND 69.0 ACRES IRRIGATED FROM POD 2.

RATE OF USE:
3.98 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 2.67 CFS FROM POD 1 AND 1.31 CFS FROM POD 2.

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:

3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1890

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	40 S	4 E	WM	16	NE SW
POD 2	40 S	4 E	WM	16	SE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation with Incidental Livestock Watering						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**	**Authorized POD**
40 S	4 E	WM	22	NE NW	0.5	POD 1
40 S	4 E	WM	22	NW NW	17.6	
40 S	4 E	WM	22	NW SW	14.3	
40 S	4 E	WM	22	SW SW	10.2	
40 S	4 E	WM	27	NW NW	23.3	
40 S	4 E	WM	27	SW NW	21.9	
40 S	4 E	WM	27	NW SW	27.6	
40 S	4 E	WM	27	SW SW	7.8	
40 S	4 E	WM	28	NE SE	3.4	
40 S	4 E	WM	28	SE SE	13.4	
40 S	4 E	WM	21	SE SE	1.1	POD 2
40 S	4 E	WM	22	NW NW	4.1	
40 S	4 E	WM	22	NW SW	6.8	
40 S	4 E	WM	22	SW NW	17.7	
40 S	4 E	WM	22	SW SW	16.0	
40 S	4 E	WM	27	NW NW	12.7	
40 S	4 E	WM	27	SW NW	10.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 RICHARD TAYLOR	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 199

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS TO THE PROPOSED ORDER

1. Claim 199 (Claimant: RICHARD TAYLOR) and its associated contests (11, 3410, 3841, and 4183) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 132.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 199 on August 24, 2004.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Richard Taylor and (2) the United States of America.

4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 199, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 199. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 199. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 199 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 199

CLAIM MAP REFERENCE: CLAIM # 199, PAGE 36

CLAIMANT: RICHARD TAYLOR
PO BOX 637
ASHLAND OR 97520

SOURCE OF WATER: SPRING CREEK, tributary to JENNY CREEK

PURPOSE OR USE: IRRIGATION OF 135.0 ACRES

RATE OF USE:
3.38 CUBIC FEET PER SECOND (CFS) 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:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 20, 1887

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	4 E	WM	34	NW SE	1620 FEET NORTH AND 260 FEET EAST FROM S ¼ CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	4 E	WM	33	NE SE		7.0
40 S	4 E	WM	33	NW SE		28.0
40 S	4 E	WM	33	SE SE		35.0
41 S	4 E	WM	3	NW NW	4	28.0
41 S	4 E	WM	3	SW NW		20.0
41 S	4 E	WM	4	NE NE	1	16.0
41 S	4 E	WM	4	SE NE		1.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication