

**BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of)	PARTIAL ORDER OF
JOSEPH E. AND FRANCES M. BROOKS)	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