

**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
JERRY BARRY)	DETERMINATION
)	
_____)	Water Right Claim 216

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, JERRY BARRY (Claimant) timely submitted a Statement and Proof of Claim (Claim 216) 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 216 was submitted for an unspecified amount of water from Fall Creek and a spring, tributary to Fall Creek, for irrigation of 80 acres with a season of use “March 1 to Oct. 30.” The claimed priority date is December 2, 1899.
3. JERRY BARRY signed the Statement and Proof of Claim for Claim 216 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 1, 2000, the Claimant timely filed Contest 43 to the Claim and/or Preliminary Evaluation of Claim 216.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3421: Klamath Irrigation District, Klamath Drainage District, Tulalake 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 Pritchard², Don Vincent³, 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.

7. On May 8, 2000, the United States of America timely filed Contest 3853 to the Claim and/or Preliminary Evaluation of Claim 216.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4195 to the Claim and/or Preliminary Evaluation of Claim 216.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 143.
10. On October 30, 2003, the Klamath Tribes voluntarily withdrew Contest 4195. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Oct. 30, 2003).
11. On April 7, 2004, the Klamath Project Water Users withdrew Contest 3421. *See* NOTICE OF WITHDRAWAL OF CONTEST 3421 (April 7, 2004).
12. On May 24, 2005, OWRD, the Claimant, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining two contests to Claim 216.
13. On May 31, 2005, the Adjudicator withdrew Case 143 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant, and the United States of America 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.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3421 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3421 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3421 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

4. Based on the file and record herein, IT IS ORDERED that Claim 216 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 216

CLAIM MAP REFERENCE: CLAIM # 216 SETTLEMENT MAP (May 9, 2005)

CLAIMANT: JERRY BARRY
8000 COPCO RD
ASHLAND OR 97520

SOURCE OF WATER:
FALL CREEK and AN UNNAMED SPRING, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 54.3 ACRES.

RATE OF USE:
A MAXIMUM TOTAL OF 1.25 CUBIC FEET PER SECOND (CFS) FROM THREE POINTS OF DIVERSION, NOT TO EXCEED 0.97 CFS FROM POD 1, 0.96 CFS FROM POD 2, AND 0.28 CFS FROM POD 3; 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: MARCH 1 - OCTOBER 30

DATE OF PRIORITY: DECEMBER 2, 1899

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

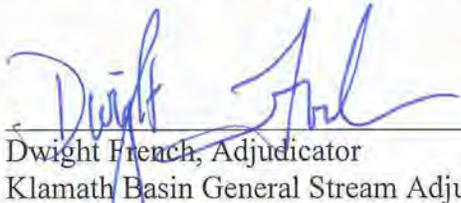
POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Unnamed Spring	41 S	4 E	WM	2	NW SW	SOUTH 5 DEGREES EAST, 632 FEET FROM W1/4 CORNER, SECTION 2
POD 2	Fall Creek	41 S	4 E	WM	3	SE SE	NORTH 79 DEGREES WEST, 390 FEET FROM SE CORNER, SECTION 3
POD 3	Fall Creek	41 S	4 E	WM	10	NE NE	SOUTH 48 DEGREES 22 MINUTES 16 SECONDS WEST, 1147 FEET FROM NE CORNER, SECTION 10

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
41 S	4 E	WM	3	SW SE	4.8	POD 1 and POD 2
41 S	4 E	WM	10	NE NE	1.5	POD 1 and POD 2
41 S	4 E	WM	10	NE NE	1.7	POD 3
41 S	4 E	WM	10	NE NE	0.5	POD 1
41 S	4 E	WM	10	NW NE	2.4	POD 3
41 S	4 E	WM	10	NW NE	27.2	POD 1 and POD 2
41 S	4 E	WM	10	SW NE	2.6	POD 3
41 S	4 E	WM	10	SE NE	0.4	POD 3
41 S	4 E	WM	10	NE NW	0.3	POD 3
41 S	4 E	WM	10	NE NW	8.3	POD 1 and POD 2
41 S	4 E	WM	10	SE NW	4.6	POD 3

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

PARTIAL ORDER OF DETERMINATION

CLAIM 216
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