

**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
PACIFICORP, DBA PACIFIC POWER	)	DETERMINATION
AND LIGHT CO.	)	
_____	)	Water Right Claim 218

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 218 (Claimant: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (12) were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 19.
2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER for Claim 218 on December 31, 2002. Exceptions were filed to this Proposed Order within the exception filing deadline by Richard Taylor.
3. Pursuant to OAR 137-003-0655(2), OWRD referred Claim 218 back to the Office of Administrative Hearings for further proceedings in order to take evidence submitted with the Exception dated January 29, 2003 filed by Richard Taylor, and to consider this evidence to determine whether Pacificorp had historically diverted 16.5 cfs from Spring Creek as claimed, or if the Claimant was diverting and beneficially using a lesser amount. The Office of Administrative Hearings conducted further proceedings and ultimately issued an AMENDED PROPOSED ORDER (Amended Proposed Order) for Claim 218 on June 19, 2008.
4. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by Richard Taylor.
5. 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 218, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

6. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “Opinion” is adopted with modifications as set forth in Section A.7, below, and 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 218. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
7. **Opinion.** The “Opinion” section of the Amended Proposed Order is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strike through~~” text):

This matter involves a contest of a claim filed in the Klamath Adjudication, a proceeding under ORS Chapter 539. There are three elements to such a claim: 1) Application of water of the Klamath River or its tributaries to beneficial use at a time prior to 1909 or a contemplated time in the future; (2) a diversion from the natural channel; and (3) application of the water within a reasonable time to some useful purpose. 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 Rights of Deschutes River and Tributaries*, 134 Or 623 (1930); *In Re Water Rights in Silvies River*, 115 Or 27, 66 (1925). It is Claimant’s burden to establish the elements of the claim. ORS 539.110. Claimant satisfied its burden of proof.

The system of appropriation of water in effect prior to the Water Rights Act of 1909 was summarized by the Supreme Court in *Porter v. Pettengill* 57 Or 247 (1910) as follows:

A settler upon the public domain, by diverting water from a natural stream for domestic use, irrigation, or manufacturing purposes, may acquire a right to the use of the amount of water thus diverted to the extent that it is put to a beneficial use for actual needs. Where several rights are acquired from the same stream, they will have priority in the order of the time of their diversion. If more water is diverted by a settler than is needed for the purpose intended, or is actually used for such need, he acquires a right only to the amount so needed and used.

[citations omitted] The water right is appurtenant to the land for which it is diverted. [cit. om.] And the quantity of water acquired by appropriation must be determined by the amount of land irrigated and the quantity of water needed therefor.

*Porter v. Pettengill* 57 Or at 249.

Thus, if there are other water rights in the same stream that may be earlier in time to the right that is the subject of this claim, those senior rights do not defeat the present right. Instead, if there is not enough water in the stream to satisfy both claims in any given year, the junior right must give way until the senior right is satisfied.

The remainder of this case turns on Contestant's position that Claimant has lost its right by nonuse.

~~There is some question whether this issue involves the law of abandonment or of forfeiture.<sup>1</sup> OWRD has noted that ORS 540.610(1) a statute providing for "forfeiture" of a water right that lies unused for five consecutive years does not apply to these proceedings because the water right in question is not based on a certificate or court decree, as provided under that statute.<sup>2</sup> OWRD also noted that its own regulation, OAR 690-028-0075(3), while using the term "forfeiture," was not referring to the "forfeiture" provided in ORS 540.610(1), but the "plain, ordinary and common meaning" provided in *Webster's Third New International Dictionary*: "divesting of ownership\*\*\*on account of the breach of a legal duty." OWRD also cautions that this rule should not be treated as nullifying any exceptions or excuses recognized for non-use. Claimant questions OWRD's authority to provide for forfeiture by rule.~~

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<sup>1</sup> "Abandonment "involves both nonuse and an intent to abandon. *In re Willow Creek* 74 Or 592 (1914). "Forfeiture" is the involuntary loss of the water right caused by nonuse for the statutory period. Forfeiture does not require intent. If both nonuse and intent to abandon are present, then abandonment may occur even before the expiration of the forfeiture statute. *Reneken v. Young*, 300 Or 352, 361 (1985).

<sup>2</sup> Contestant's Exception asserted that under ORS 539.010(1) two years nonuse is the applicable time to establish abandonment in this case. That statute relates to the circumstances in which a riparian proprietor may establish a vested right to water based on the proprietor's use, or its predecessor's use, of water before 1909. The statute does not apply here because Contestant has not argued that the original riparian proprietor's claim never vested because of two years' nonuse. Contestant has asserted that *Claimant* abandoned or forfeited its claim.

~~Whether a water right is subject to forfeiture or abandonment for nonuse is irrelevant, if nonuse, itself, is not found. Here, the evidence did not support Contestant's contention that Claimant did not use the water for 5 years, or for any substantial period, before 1988. As to Claimant's nonuse of water after 1994, this occurred after the claim was filed in this case, and, at all events, is not a proper ground for avoidance of the right, under the facts in this case.~~

It is a generally accepted principle of the doctrine of prior appropriation that water rights may be lost through nonuse. Most states that apply this doctrine determine nonuse based on the concepts of abandonment or forfeiture, or a combination of both. In order to find that a water right has been abandoned, "there must be a concurrence of the intention to abandon it and actual failure in its use."<sup>3</sup> *Hough v. Porter*, 51 Or 318, 434 (1909). The burden of establishing abandonment lies with the proponent of the abandonment (in this case, the contestant(s) to the claim). *Id.*

In contrast, forfeiture is based solely on the nonuse of water over a statutorily defined period of time, regardless of the intent of the water right holder. In Oregon, a rebuttable presumption of forfeiture is established "whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years." ORS 540.610. The burden of proving this rebuttable presumption lies with the proponent of the forfeiture. *Rencken v. Young*, 300 Or 352, 364 (1985).

Abandonment is the applicable standard in this case. In Oregon, forfeiture applies to "perfected and developed" water rights. A "developed" right is one that has been applied to the intended beneficial use. In *Green v.*

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<sup>3</sup> Contestant's Exception asserted that under ORS 539.010(1) two years nonuse is the applicable time to establish abandonment in this case. That statute relates to the circumstances in which a riparian proprietor may establish a vested right to water based on the proprietor's use, or its predecessor's use, of water before 1909. The statute does not apply here because Contestant has not argued that the original riparian proprietor's claim never vested because of two years' nonuse. Contestant has asserted that *Claimant* abandoned or forfeited its claim.

Wheeler, the court defined the term “perfected” as it is used in Oregon’s Water Code. 254 Or 424 (1969) (*Green*). The court explained that *prior* to the enactment of the Water Code appropriation of water was sufficient to establish a “vested” interest in the use of water. *Id.* at. 430. In contrast, a water right acquired under the Water Code is not “vested” until the “appropriation has been perfected.” *Id.* “Perfection,” as defined by the court, requires appropriation of water, the fulfillment of conditions specified in or authorized by the Water Code, and a determination by the Water Resources Department that the right has been perfected. *Id.* at 430-31. (emphasis added). See also, *Hale v. Water Resources Department*, 184 Or App 36, 41 (2002) (citing to *Green*, and holding that “whether an appropriation has been ‘perfected’ within the meaning of ORS 537.250(1) is expressly left ‘to the satisfaction of the department’”). *Green* cited to several instances in the Water Code of the term “perfected” in reaching this conclusion.

Perfection then, requires an administrative determination of the validity of the right. An unadjudicated right, which has not been subject to administrative determination, is not a perfected right for the purposes of ORS 540.610. Although the court in *Green* did not cite specifically to ORS 540.610, there are no textual or contextual bases for interpreting “perfected,” as that term is used in ORS 540.610, differently than *Green* interpreted it.

When a water right has been perfected, ORS 540.610 applies and supersedes the common-law abandonment doctrine. *Rencken v. Young*, 300 Or at 361. However, where a common-law doctrine has not been superseded by statute, it remains applicable. See, e.g., *Olsen v. Deschutes County*, 204 Or App 7, 13-17 (2006). Because ORS 540.610 does not apply to unadjudicated rights initiated under state law, the abandonment doctrine does.

As described below, Contestant has not met the burden of proving abandonment of the claimed water right.

*Nonuse before 1988:*

At the outset it should be noted that those portions of Contestant's argument dealing with failure of Claimant to comply with various provisions of Oregon law are without merit for several reasons.

First, Contestant is limited to the terms of his contest. Nowhere in the contest document does Contestant refer to a failure by Claimant to comply with those laws as a basis for invalidating the claim. However, even if Contestant had raised that argument, the statutes he cites did not establish the exclusive process for appropriating water at the time. *State ex rel Van Winkle v. People's West Coast Hydroelectric Corp.* 129 Or 475 (1929). So long as the three standards stated in *In re Deschutes River, ibid.* are met, the appropriation is completed.

Claimant, as the proponent of the claim, bears the burden of showing that it diverted and put to beneficial use the claimed amount of water at least once during the applicable period. Claimant satisfied its burden. Contestant, as the party asserting forfeiture or abandonment, had the burden to prove by reliable, probative, and substantial evidence, ORS 183.450(5), that there was "a concurrence of the intention to abandon [the water right] and actual failure in its use." *Hough v. Porter*, 51 Or at 434. ~~Claimant failed to divert and use the claimed water right. *Rencken v. Young*, 300 Or 352, 364-65 (1985).~~ Contestant did not satisfy its burden of proof.

Contestant argued at great length concerning the amount of water that leaked from Claimant's works before the renovation in 1988, arguing that there was not 16.5 cfs left in the works for at least the 5 years before that renovation. The evidence did not support Contestant's position.

Most of Contestant's argument was based upon Contestant's opinion, from measurements that Contestant conducted along the ditch.

Contestant argued that those measurements demonstrate that the ditch, especially when leaking, was not capable of carrying 16.5 cfs. Contestant also argued from the measurement of water that was carried in the natural stream into Contestant's own works, that there was not sufficient water left to satisfy Claimant's claim.

The most telling evidence contradicting Contestant's position is the testimony of John Richards that the upper end of the 24-inch culvert was always under water. Exhibit 8009, an excerpt from the *Handbook of Steel Drainage & Highway Construction Products* (American Iron and Steel Institute, 3rd Ed. 1983) shows that the culvert would carry 17 or 18 cfs when a head of water above the upper end of the culvert is 12 inches. Richard Barney testified that when there was a head of water above the culvert, it would be carrying 16.5 cfs, and that he observed such a head of water himself.

Contestant argued that the culvert must have been obstructed to produce such a head of water. However, this is an inference based upon Contestant's opinion, and is not supported by any direct evidence of such an obstruction. To the contrary, John Richards testified that he never observed a large obstruction in the culvert. The record contains no evidence that any large obstruction was present in the culvert for more than a short time. Richard Barney testified that the slope of the culvert was such as to scour any sand or silt out of the culvert.

Contestant also argued that, given the amount of water he was removing from the ditch, there was not enough water left to allow 16.5 cfs to be diverted to the powerhouse. However, the evidence he presented did not go so far.

In the first place, Contestant assumed that the total amount of water coming from the springs was a constant 18 cfs, and, subtracting his withdrawal from that figure, derived a balance less than 16.5 cfs. However,

Richard Barney testified that Spring Creek was a spring-fed stream that did not have as much seasonal variation as a stream fed by snow-melt, but still varied “maybe as much as 10 cfs, plus or minus” from the general rate of 17 to 18 cfs. Thus, to show that it was impossible for Claimant to draw 16.5 cfs at any time during the period in question, which is essentially what Contestant argued, it would be necessary to subtract Contestant's use from 28 cfs, not 18.

In the second place, the evidence did not show that Contestant's withdrawal was constant. To the contrary, until 1987 Contestant was not diverting water from the ditch to supply his aquaculture facility. Even after the renovation, the evidence suggested Contestant would vary his withdrawal from the ditch to meet the requirements of his system.<sup>4</sup> It would thus be necessary to show that Contestant's use never dropped below 11.5 cfs during the entire period at issue. Contestant's evidence did not approach this showing.

Finally, Contestant argued that before the renovation Claimants diversion did not have a carrying capacity of 16.5 cfs. This is, however, not based on any measurements that withstand scrutiny.<sup>5</sup>

### ***Exception Exhibits 1 and 2***

Contestant also argued that Fall Creek's “normal” flow was about 31 cfs and that Spring Creek's and Fall Creek's combined flow averaged about 31 to 35 cfs. Contestant argued that Spring Creek contributed only 0 to 4 cfs to the total flow at Claimant's power station. (Exception at 69.)

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<sup>4</sup> The log entries placed in evidence as part of John Richards' direct testimony include several where Contestant or his mother changed the amount being diverted to the former channel. *See e.g.* entry for August 12, 1991, “Yesterday Mrs. Taylor requested that we turn out more water from the Spring Creek Canal into the old channel.”

<sup>5</sup> For example, Contestant estimated the width of the canal as shown in one photograph by comparing it to the width of a nearby cattle trail. (Trans. 202.)

Contestant offered Exception Exhibits 1 and 2 in support of this argument. Exception Exhibit 1 is OWRD's discharge measurements taken at Fall Creek, near the California border, on one day in November 2002. According to Contestant, Exception Exhibit 1 "proves that Fall Creek historically was the major and sometimes only source available to [Claimant's] Fall Creek facility providing 31+ cfs of the 35 cfs [Claimant] has claimed to have diverted." (Exception at 70.) Contrary to Claimant's argument, one day's measurements taken at a point past the confluence of two creeks does not "prove" the "historical" flow of either of the creeks.

Contestant argued that Exception Exhibit 2—records of the water flow at Fall Creek at Copco, California, from 1928 to 1959—"only registered 31-35 cfs average summer levels for 29 years. \*\*\* This proves that the 16.5 cfs from 'Spring Creek' claimed to have been diverted and used by [Claimant] never made it to the Fall Creek basin. [Claimant] can't claim to use what isn't there." (Exception at 70.) According to Contestant, if Fall Creek's natural flow was 31+ cfs, then adding 16.5 cfs of water from Spring Creek would have resulted in total water flow of 47.5 cfs at the Fall Creek gage, which is "12.5 cfs to 16.5 cfs more than historically present within the Fall Creek basin \*\*\*." (Exception at 72 to 73.)

Exception Exhibit 2 did not support Contestant's argument. The exhibit showed that the flow at the Fall Creek power station varied widely during each year, often exceeding 200 cfs. Even the mean flow fluctuated between 30 cfs to 60 cfs during the years represented by the exhibit. Therefore, this exhibit did not establish that Spring Creek provided only 0 to 4 cfs to Claimant's power station. ~~Further, proof of nonuse during the period covered by Exception Exhibit 2 does not make a valid contest, because the records relate to a period more than 15 years before Contestant filed his contest. Under OAR 690-028-0075(3)(e), a valid contest ground is that the Claimant's claim had been "forfeited by five or more consecutive years of non-use less than fifteen years previously."~~ (Italics added.)

Starting with the 1950-1951 record, Exception Exhibit 2's records that "Power company diverts about 4 cfs to Fall Creek (above station from Spring Creek (tributary to Jenny Creek))." The remark is repeated verbatim in each record through 1958-1959. ~~Again, the remark relates to a period more than 15 years before Contestant's contest.~~ Claimant objected to the hearsay. The exhibit does not disclose the source of the information or the method or circumstances under which the information was obtained. In view of the evidence of wide variation in the creeks' flows, the repeated verbatim remark about a constant 4 cfs diversion from Spring Creek does not appear to be trustworthy and does not constitute substantial evidence for that proposition. *See Reguero v. Teacher Standards and Practices*, 312 Or 402, 418 (1991). Further, even if these remarks did not constitute substantial evidence of the amount of diversion during these years, the evidence is not sufficient to establish an intent to abandon a portion of the water right.

In administrative proceedings, each fact must be proved by a preponderance of the evidence. In other words, it must be shown that each fact is more likely than not to be true. *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999); *Cook v. Employment Division* 47 or App 437 (1980); *Metcalf v. AFSD*, 65 Or App 761 (1983), *rev den* 296 Or 411 (1984); *OSCI v. Bureau of Labor Industries*, 98 Or App 548 *rev den* 308 Or 660 (1989). Considering the evidence on that basis, Contestant has failed to prove abandonment of the claimed water right during the period up to 1994. ~~it is more likely than not that at least up to the time of the renovation no five year period elapsed during which 16.5 cfs of water never flowed from the Spring Creek diversion to Claimant's powerhouse.~~

#### ***Nonuse after 1994***

The evidence after 1994 is much different. It is uncontested that Contestant diverted the entire stream to his own works starting in 1994. It is

also uncontested that Claimant acquiesced in this diversion. The question remaining is the legal significance of this state of affairs.

It should be noted that, although Claimant's personnel testified that they felt uneasy about Contestant's action of "self-help." There is no substantial evidence of an overt show or threat of force. It is apparent, however, that Claimant's acquiescence was not consensual. To the contrary, when Claimant protested Contestant's actions to the watermaster, and received no assistance, Claimant was left with no apparent recourse short of a breach of the peace.

On the other hand, Contestant entered on and tampered with Claimant's diversion works, under the apparent impression that, because the works had lain unrepaired for a considerable period before the renovation, Claimant's claim to the water had been extinguished. As discussed above, this impression was mistaken, or, at least, not supported by the record in this case.

While a sufficiently lengthy period of non-use can give rise to an inference of abandonment, the facts in this case do not support such an inference that Claimant intended to abandon its diversion. See, e.g., *In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996). Rather, Claimant's nonuse has been imposed by Contestant. Although Claimant ultimately acquiesced to Contestant's potentially illegal actions,<sup>6</sup> there is no evidence that Claimant would not return to diverting water given an opportunity to do so.

~~As OWRD has noted in a different context, this proceeding is in the nature of an equitable proceeding. OWRD has also noted that the provisions of OAR 690-028-0075(3) relating to "forfeiture" are not intended~~

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<sup>6</sup> ORS 540.610(7) provides, in pertinent part: "No person shall willfully open, close, change, or interfere with any lawfully established headgate or water box without authority\*\*\*\*." It is not necessary for OWRD to make a definitive ruling as to the legality of Contestant's conduct in this proceeding. Given that the burden of proof of

~~to import the terms of ORS 540.610 into the adjudication process. Consequently, it is possible to recognize, in these proceedings, some equitable principles that might not otherwise apply. One of these principles is the requirement of “clean hands.”~~

~~“Unclean hands” is an equitable doctrine under which the court, in order to protect its own integrity, will deny equitable relief to a party in a transaction if that party, relative to the same transaction, is “guilty of improper conduct no matter how improper the [other party’s] behavior may have been.” [Citation omitted.] Several limitations restrict application of the doctrine. First, “the misconduct must be serious enough to justify a court’s denying relief on an otherwise valid claim. Even equity does not require saintliness.” [Citation omitted.] Examples of serious misconduct include crimes, fraud, disloyalty to an employer, and bad faith. [Citation omitted.] Second, a court will not invoke the maxim if doing so will work an injustice. [Citation omitted.] Third, the party in favor of whom the maxim is invoked must prove that he or she has suffered actual injury due to the alleged misconduct. [Citation omitted.]~~

~~*Welsh v. Case*, 180 Or App 370, 385 (2002).~~

~~The circumstance presented here is precisely that for which application of the clean hands doctrine was intended. Contestant entered upon Claimant’s property, and interfered with Claimant’s headgate, to the point where Claimant was prevented from using its water for more than five years.~~

~~There is some question as to whether, even if he had a superior right to the water, Contestant could change Claimant’s headgate without violating ORS 540.710.<sup>7</sup> Here, as has been discussed above, Contestant’s belief that Claimant’s water right had been extinguished by nonuse prior to the renovation was not correct. Thus, Contestant’s actions constitute “improper conduct.”~~

~~That improper conduct, being a violation of law, was sufficiently serious to justify denying relief. Moreover, denial of relief to Contestant in this case will not work an injustice on Contestant. To the contrary, allowing~~

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establishing abandonment lies with Contestant, it is sufficient to conclude that Contestant has not established his authority to undertake the actions that have prevented Claimant’s diversion.

~~Contestant to extinguish Claimant's water right by expropriating Claimant's water for five years would clearly be unjust to Claimant.~~

~~Finally, if Contestant were permitted to prevail under these circumstances, Claimant would lose its water right on Spring Creek, as well as the benefit of the works constructed there. Claimant has clearly suffered an injury because of Contestant's conduct.~~

~~Contestant is barred by his unclean hands from asserting that Claimant's nonuse of water after 1994 extinguished Claimant's water right.~~

**Summary:** Claimant has established the required elements of a pre-1909 water right by a preponderance of the evidence. Although Claimant has not made use of the claimed right since 1994, Contestant has not proved that Claimant's nonuse constitutes an intent to abandon the right. A preponderance of the evidence in this case establishes that Claimant used the water claimed without a break of five years, until 1994. Although Claimant has not used the water claimed since that time, this nonuse is excused Contestant's improper conduct. The claim is valid.

**Reasons for Modifications:** To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right; to clarify that abandonment is the applicable standard for determining loss of an adjudicated water right; to apply the facts to the legal standard of abandonment; to remove discussion of equitable principle of "unclean hands" from the Opinion as unnecessary, since Contestant did not establish abandonment.

## B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications as set forth in Section A.7, above, and 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 218. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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<sup>7</sup> 540.710 provides in pertinent part: "No person shall willfully open, close, change, or interfere with any lawfully established headgate or water box without authority\*\*\*\*."

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 218 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 218**

**CLAIM MAP REFERENCE:**

OWRD INVESTIGATION MAP – T 41 S, R 4 E, W.M. & T 48 N, R 4 W, M.D.M

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

**SOURCE OF WATER:** SPRING CREEK, tributary to JENNY CREEK

**PURPOSE OR USE:** POWER DEVELOPMENT

**RATE OF USE:**

16.5 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION

**PERIOD OF ALLOWED USE:** JANUARY 1 - DECEMBER 31

**DATE OF PRIORITY:** SEPTEMBER 23, 1902

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

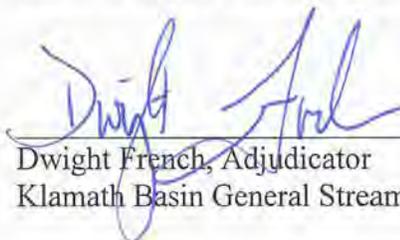
Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	4 E	WM	3	NE NW	3

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

POWER DEVELOPMENT				
Twp	Rng	Mer	Sec	Q-Q
48 N	4 W	MDM	30	SW NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication