

**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 219

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 219) 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 219 was submitted for a total of 0.2 cubic feet per second (cfs) of water from an “unnamed stream (Tom Creek),” a tributary of the Klamath River, for irrigation of 8.0 acres, with a season of use “April 15 - October 31.” The claimed priority date is 1906.
3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as “1906” for “appropriation, diversion and application to beneficial use” (Claim # 219, Page 002).
4. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 219 attesting that the information contained in the claim is true.
5. In 1979, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 223. The report also includes the statement, “He [Mr. Laubacher] had sold the ranch to Pacific Power and Light Co. in the past and is now leasing it back. Mr. Laubacher said that his place was actually made up of two old homesteads, these were the Hessig and Fay homesteads. Mr. Laubacher said that the water use began around 1874 on these two homesteads.” (Claim # 219, WIP, Pages 00003 - 00004).

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 fewer acres and concurrently for a smaller quantity of water than claimed, and with a longer season of use than claimed.
7. On May 5, 2000, the Claimant, timely filed Contest 2057 to the Preliminary Evaluation of Claim 219 contesting the Adjudicator's denial of the claim.
8. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3203 to the Claim and/or Preliminary Evaluation of Claim 219.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 20.
10. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3203. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).
11. On April 29, 2002, Contest 3203 was dismissed. *See* THIRD AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Apr. 29, 2002).
12. On June 5, 2002, the OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. executed a STIPULATION TO DISMISS CONTEST NO. 2057 (Settlement Agreement) thereby resolving the remaining contest to Claim 219.
13. On June 6, 2002, the Adjudicator withdrew Case 20 from the Office of Administrative Hearings.
14. 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 "April 15 - October 31."

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, with the exception of the irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 14, 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 219 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 219

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 41 S, R 5 E

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

SOURCE OF WATER: UNNAMED STREAM, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 6.2 ACRES.

RATE OF USE:

0.16 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 15 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1906

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	5 E	WM	12	SE SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	5 E	WM	12	SW SW	3.1
41 S	5 E	WM	12	SE SW	3.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication