

**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 223

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 223) 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 223 was submitted for a total of 0.20 cubic feet per second (cfs) of water from an unnamed spring for domestic use, with a season of use January 1 to December 31. The claimed priority date is September 4, 1906.
3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as "September 4, 1906" for "appropriation, diversion and application to beneficial use" (Claim # 223, Page 002).
4. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 223 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 # 223, WIP, Pages 00008 - 00009).

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 3206 to the Claim and/or Preliminary Evaluation of Claim 204.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 22.
9. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3206. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).
10. On February 13, 2002, Contest 3206 was dismissed from the Office of Administrative Hearings. *See* THIRD AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).
11. Based on the sworn statements in Claim 223, 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.
12. OWRD finds that the delivery system described in the 1979 field inspection report (Claim # 223, WIP Pages 00008 - 00009) has the capacity to deliver 0.01 cubic foot per second, and thus Claim 223 is limited to this amount.
13. Item 8 of the Statement and Proof of Claim (Claim # 223, Page 004) describes the point of diversion as being in the NWSW, Section 12, T 41 S, R 5 E, W.M. In Item 11 of the same Statement and Proof of Claim (Claim # 223, Page 005) the claimant indicates they accept the map prepared by OWRD and agree that it “show[s] correctly the location of

the diversion point.” This OWRD investigation map (T 41 S, R 5 E) clearly shows a spring in the SESE, Section 11, T 41 S, R 5 E, W.M. delivering water to a house in the claimed place of use in the SWSW, Section 12, T 41 S, R 5 E, W.M. OWRD finds the point of diversion for Claim 223 to be in the SESE, Section 11, T 41 S, R 5 E, W.M.

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, standard rate for domestic use, being 0.01 cfs per dwelling as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of domestic 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.
3. Based on the file and record herein, IT IS ORDERED that Claim 223 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 223

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: An UNNAMED SPRING, tributary to HAYDEN CREEK

PURPOSE or USE: DOMESTIC USE FOR ONE HOUSEHOLD.

RATE OF USE:

0.01 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE.

DIVERSION OF DOMESTIC 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.

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 4, 1906

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	5 E	WM	11	SE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication