

**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
LINDSAY LUMBER CO.)	DETERMINATION
)	
_____)	Water Right Claim 138

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 28, 1991, LINDSAY LUMBER CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 138) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based on use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 138 was submitted for an unspecified quantity of water for livestock watering of 250 head from Blake Spring and an Unnamed Spring, both tributary to Grizzly Creek, and for an unspecified quantity of water for domestic use from Blake Spring. The claimed season of use is “year around” for both livestock watering and domestic use. The claimed priority date is 1887.
3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as “1887 . . . by use of the water.” (Claim # 138, Page 001).
4. The Claimants did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.
5. ROLAND LINDSAY as agent of LINDSAY LUMBER CO. signed the Statement and Proof of Claim for Claim 138 attesting that the information contained in the claim is true.
6. In 1981, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 138 (Claim # 138, WIP, Page 00009). The report also includes the statement, “The Lindsays explained that this spring [Blake Spring] is on land that was homesteaded before 1887 by a man named Blake. There was a timber in the old barn with the names, and the date 1887, of the builders.”

7. 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.
8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 138.
9. Based on the sworn statements in Claim 138, 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.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED 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.
3. Claimants' claim for a separate right of use for livestock watering is denied, because Claimants failed to timely submit fees for livestock use. ORS 539.210 provides that "it shall be the duty of all claimants . . . to appear and submit proof of their respective claims, *at the time and in the manner required by law.*" (Emphasis added) Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings." ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For Claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. Because OWRD did not receive payment for a separate right of use for livestock watering by the deadline, this portion of Claimants' claim must be denied.
4. Based on the file and record herein, IT IS ORDERED that Claim 138 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 138

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 38 S, R 3 E

CLAIMANT: LINDSAY LUMBER CO.
525 N BARNEBURG RD
MEDFORD OR 97504

SOURCE OF WATER:
BLAKE SPRING, tributary to GRIZZLY CREEK

PURPOSE or USE:
DOMESTIC FOR ONE DWELLING.

RATE OF USE:
0.01 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION.

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: DECEMBER 31, 1887

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:


Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	14	SW SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	14	SW SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication