

**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
KENNETH J. ANDERSON AND)	DETERMINATION
JERRY D. ANDERSON)	
_____)	
)	Water Right Claim 174

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 October 29, 1990, MERLE ANDERSON timely submitted a Statement and Proof of Claim (Claim 174) 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 174 was submitted for a total 0.25 cubic feet per second (cfs) of water from Spencer Creek, a tributary of the Klamath River, for irrigation of 9.6 acres, with a season of use "May 15 – Oct. 15." The claimed priority date is June 1886.
3. A copy of a deed from the State of Oregon to C. E. Nininger, "DEED, STATE RECORD OF DEEDS, BOOK 2, PAGE 537 (Feb. 19, 1889)," is incorporated into the Statement and Proof of Claim by reference (Claim # 174, Page 027).
4. MERLE ANDERSON signed the Statement and Proof of Claim for Claim 174 attesting that the information contained in the claim is true.
5. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 174 (*See* Claim 174, WIP, Page 00010).
6. The property appurtenant to Claim 174 was subsequently acquired by KENNETH J. ANDERSON AND JERRY D. ANDERSON (Claimants). *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M95, PAGE 26619 (Oct. 2, 1995), (Claim # 174, Page 030).
7. On May 26, 1999, the Claimants supplemented information to Claim 174 by providing a statement signed by Merle W. Anderson, stating in pertinent part: "The property in question was purchased by the Andersen family from C.E. Nininger and wife in 1896.

They had owned the property approximately seven years during which time they had built quite an extensive irrigation system.” (Claim # 174, Page 019).

8. 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.
9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3164 to the Claim and/or Preliminary Evaluation of Claim 174.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 25.
11. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3164. *See VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS* (Dec. 30, 2001).
12. On February 13, 2002, Contest 3164 was dismissed from the Office of Administrative Hearings. *See AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR* (Feb. 13, 2002).
13. Based on the sworn statements in Claim 174, along with the field inspection report, the following findings are made:
 - a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.
 - b. The Claimants created a diversion, where necessary, to divert water from its natural source.
 - c. The Claimants 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 PRE-1909 CLAIMS is incorporated as if set forth fully herein.
2. 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.
3. Based on the file and record herein, IT IS ORDERED that Claim 174 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 174

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 7 E

CLAIMANT: KENNETH J ANDERSON
JERRY D ANDERSON
29331 "A" ST
KLAMATH FALLS, OR 97601

SOURCE OF WATER: SPENCER CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 9.6 ACRES.

RATE OF USE:

0.24 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: MAY 15 - OCTOBER 15

DATE OF PRIORITY: JUNE 30, 1886

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

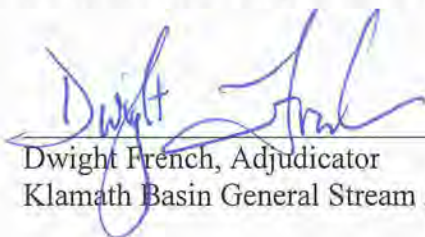
Twp	Rng	Mer	Sec	Q-Q
39 S	7 E	WM	19	SW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 E	WM	19	SW NW	9.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication