

**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
HAROLD W. SIMMERS)	DETERMINATION
)	
_____)	Water Right Claim 176

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 November 29, 1990, HAROLD W. SIMMERS timely submitted a Statement and Proof of Claim (Claim 176) 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 176 was submitted for a total 0.125 cubic feet per second (cfs) of water from Spencer Creek, a tributary of the Klamath River, for irrigation of 4.0 acres, with a season of use "June 1 – Sept. 30." The claimed priority date is 1896.
3. HAROLD W. SIMMERS signed the Statement and Proof of Claim for Claim 176 attesting that the information contained in the claim is true.
4. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 176. The report also includes the statement: "Met with Jerry Anderson at the ranch and he said that it was the original Lynn Anderson homestead. The water use began at that time, 1886 and has been used for irrigating the pasture and stock water." (Claim 176, WIP Page 00016).
5. 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 and an earlier priority date than claimed.
6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3166 to the Claim and/or Preliminary Evaluation of Claim 176.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 27.
8. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3166. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).
9. On February 12, 2002, Contest 3166 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 12, 2002).
10. OWRD finds the priority date to be 1896, as claimed.
11. Based on the sworn statements in Claim 176, 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 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 176 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 176

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

CLAIMANT: HAROLD W. SIMMERS
5925 CLIMAX ST.
KLAMATH FALLS, OR 97603

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

PURPOSE or USE: IRRIGATION OF 4.0 ACRES.

RATE OF USE:

0.1 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: JUNE 1 - SEPTMEBER 30

DATE OF PRIORITY: DECEMBER 31, 1896

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:


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

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 E	WM	19	NW SE	4.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication