

**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
WILLIAM BOEHME AND)	DETERMINATION
MERNICE BOEHME)	
_____)	Water Right Claim 181
)	

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 13, 1990, GARY FRAZIER AND PATRICIA FRAZIER timely submitted a Statement and Proof of Claim (Claim 181) 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 181 was submitted for 45-60 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 0.5 acres with a season of use “May – Oct.” The claimed priority date is 1878.
3. Item 4 of the Statement and Proof of Claim includes the statement, “Past history of use – Purch. for farming Oct 26, 1872 with continuous use since.” (Claim # 181, Page 001).
4. Item 13 of the Statement and Proof of Claim incorporates “Exhibit A,” a copy of a deed from the State of Oregon to Jesse D. Walker, “DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 181, Page 018).
5. Item 13 of the Statement and Proof of Claim incorporates “Exhibit D,” a statement signed by Esther Kerns Johnston which states in pertinent part: “To the best of my knowledge there has been continuous irrigation of Riverside Addition from Klamath River since late 1800.” (Claim # 181, Page 009)
6. GARY FRAZIER AND PATRICIA FRAZIER signed the Statement and Proof of Claim for Claim 181 attesting that the information contained in the claim is true.

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 181 (Claim 181, WIP Pages 00014 and 00015).
8. On August 31, 1992, the title to the property associated with Claim 181 was transferred to WILLIAM BOEHME AND MERNICE BOEHME (Claimants) from GARY A. FRAZIER AND PATRICIA J. FRAZIER. *See* COUNTY OF KLAMATH RECORDS, VOL. M92, PAGE 20184 (Claim # 181, Pages 032 - 034).
9. 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 than claimed and a longer season of use than claimed.
10. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3171 to the Claim and/or Preliminary Evaluation of Claim 181.
11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 30.
12. On January 7, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3171. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 7, 2002).
13. On February 13, 2002, Contest 3171 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).
14. Based on the sworn statements in Claim 181, 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.
15. Based on the OWRD Investigation Map (T 39 S, R 8 E, Insert C), OWRD finds 0.2 acre is irrigated within Lot 2 in Block 1 of the Riverside Addition to Keno.

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 181 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 181

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 8 E, INSERT C

CLAIMANT: WILLIAM BOEHME
MERNICE BOEHME
PO BOX 462
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:

IRRIGATION OF 0.2 ACRE WITHIN LOT 2 IN BLOCK 1 OF RIVERSIDE ADDITION TO KENO.

RATE OF USE:

0.01 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 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1878

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

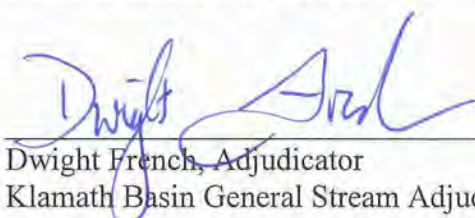
Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SW SW	Lot 5 in Block 2 of Riverside Addition to Keno

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Remarks
39 S	8 E	WM	31	NE SW	3000	0.2	Lot 2 in Block 1 of Riverside Addition to Keno
39 S	8 E	WM	31	SE SW			

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication