# 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
SHARON L. PAPPAS	)	DETERMINATION
	)	
	)	Water Right Claim 184

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 22, 1990, ESTHER KERNS JOHNSTON timely submitted a Statement and Proof of Claim (Claim 184) 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 184 was submitted for 28.8 gallons per minute of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 0.3 acres with a season of use "May Oct." The claimed priority date is 1873.
- 3. Item 4 of the Statement and Proof of Claim includes the statement: "Land was purchased for farming Oct 26, 1872 with continuous use of land and irrigation ever since." (Claim # 184, Page 01).
- 4. 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 # 184, Page 010).
- 5. ESTHER KERNS JOHNSTON signed the Statement and Proof of Claim for Claim 184 attesting that the information contained in the claim is true.
- 6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 184 (Claim 184, WIP Pages 00011-00012).
- 7. On May 23, 1996, the title to the property associated with Claim 184 was transferred to SHARON LYNN PAPPAS (Claimant). See DEED, COUNTY OF KLAMATH, Vol. M96, PAGE 15264 (Claim # 184, Pages 030).

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- 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, but for a smaller quantity of water than claimed and a longer season of use than claimed.
- 9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3174 to the Claim and/or Preliminary Evaluation of Claim 184.
- 10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 31.
- On January 7, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3174. See Voluntary Withdrawal of Contest By Langell Valley, Horsefly, Medford and Rogue River Valley Irrigation Districts (Jan. 7, 2002).
- 12. On April 29, 2002, Contest 3174 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Apr. 29, 2002).
- 13. Based on the sworn statements in Claim 184, 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.
- 14. OWRD finds the priority date to be 1873 as claimed.

## **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 184 is approved as set forth in the following Water Right Claim Description.

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CLAIM NO. 184

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

CLAIMANT: SHARON L. PAPPAS

70 THROCKMORTON MILL VALLEY, OR 94941

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

PURPOSE or USE:

IRRIGATION OF 0.3 ACRE WITHIN LOTS 1 AND 2 IN BLOCK 2 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, 1873

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
39 S	8 E	WM	31	SWSW	Lot 4 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	SE SW	3200	0.3	Lots 1 and 2 in Block 2 of Riverside Addition to Keno		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight/French, Adjudicator

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PARTIAL ORDER OF DETERMINATION

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