

**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
RENOLD R. AND ELSIE E. PASSIEN)	DETERMINATION
)	
_____)	Water Right Claim 187

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 28, 1990, RENOLD R. AND ELSIE E. PASSIEN (Claimants) timely submitted a Statement and Proof of Claim (Claim 187) 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 187 was submitted for a total 0.15 cubic feet per second (cfs) of water from an unnamed spring, tributary to the Klamath River, being 0.01 cubic foot per second for domestic use and 65 gallons per minute (0.14 cubic foot per second) for irrigation of 11.7 acres. The claimed season of use is "April - October." The claimed priority date is 1901.
3. Item 13 of the Statement and Proof of Claim incorporates "Sheet A," a copy of a deed for the portion of lands in Section 27 appurtenant to Claim 187 from the State of Oregon to Orson A. Stearns, "STATE WARRANTY DEED, VOL. 1, PAGE 350 (June 24, 1878) (Claim # 187, Page 005).
4. RENOLD R. PASSIEN AND ELSIE E. PASSIEN signed the Statement and Proof of Claim for Claim 187 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 187. The report also includes the statement, "The Passien's explained that they were told by a neighbor that their property was part of the original Van Valkenberg homestead. They did not know just when the water use would have started, however they have found that some of the old buildings have newspaper dated 1901 plastered to walls and ceilings. . . . The Passiens understood

that the house they are living in on this property was the original house for the homestead.” (Claim 187, WIP Page 00014).

6. On November 19, 1998, the Claimants supplemented information to Claim 187 and clarified that the domestic season of use is “12 months a year” (Claim # 187, Page 009).
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. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3177 to the Claim and/or Preliminary Evaluation of Claim 187.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 32.
10. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3177. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).
11. On February 13, 2002, Contest 3177 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).
12. Based on the sworn statements in Claim 187, 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 187 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 187

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

CLAIMANT: RENOLD R. AND ELSIE E. PASSIEN
8910 HWY 66
KLAMATH FALLS OR 97601

SOURCE OF WATER: UNNAMED SPRING, tributary to the KLAMATH RIVER

PURPOSE or USE:
DOMESTIC; AND
IRRIGATION OF 11.7 ACRES.

RATE OF USE:
0.15 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION,
BEING 0.01 CFS FOR DOMESTIC USE AND 0.14 CFS FOR IRRIGATION.

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:

Use	Period
Domestic	Jan 1 - December 31
Irrigation	April 1 - October 31

DATE OF PRIORITY: DECEMBER 31, 1901

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
39 S	8 E	WM	27	NW NE

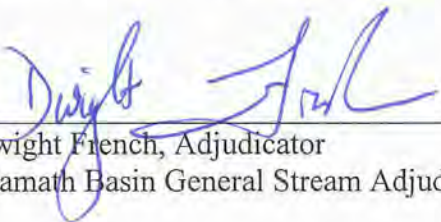
THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
39 S	8 E	WM	27	NW NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 E	WM	22	SW SE	5.70
39 S	8 E	WM	27	NW NE	6.00

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication