

**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
JOHN W. POWELL AND)	DETERMINATION
BARBARA J. POWELL)	
_____)	
)	Water Right Claim 188

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 15, 1990, JOHN W. POWELL AND BARBARA J. POWELL (Claimants) timely submitted a Statement and Proof of Claim (Claim 188) 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 188 was submitted for 0.132 cubic foot per second of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.3 acres with a season of use "approx. May 1 thru 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[;] continuous use and irrigation ever since." (Claim # 188, Page 001).
4. Item 13 of the Statement and Proof of Claim incorporates 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 # 188, Page 017).
5. JOHN W. POWELL signed the Statement and Proof of Claim for Claim 188 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 188 (Claim 188, WIP Pages 00011-00012).
7. On May 4, 1999, the Claimants supplemented information to Claim 188 by providing a copy of a deed from the State of Oregon to Jesse D. Walker, "DEED, BOOK 1, PAGE 24 (Oct. 26, 1872) (Claim # 188, Page 064).
8. On May 4, 1999, the Claimants amended Claim 188 by providing clarification that only one diversion point (located in Lot 4, Block 2) rather than two supplies water to the claimed place of use (Claim # 188, Page 035).
9. On May 4, 1999, the Claimants supplied a map for Claim 188 showing 1.3 acres of irrigation (Claim 188, Page 036).
10. 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.
11. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3178 to the Claim and/or Preliminary Evaluation of Claim 188.
12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 33.
13. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3178. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).
14. On February 13, 2002, Contest 3178 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).
15. Based on the sworn statements in Claim 188, 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 188 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 188

CLAIM MAP REFERENCE: CLAIM 188, PAGE 036

CLAIMANT: JOHN W. POWELL
BARBARA L. POWELL
PO BOX 16
KENO, OR 97627

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

PURPOSE or USE: IRRIGATION OF 1.3 ACRE.

RATE OF USE:

0.03 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	SW SW	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
39 S	8 E	WM	31	NE SW	2500	1.2
39 S	8 E	WM	31	NW SW		0.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication