

**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)	CORRECTED PARTIAL ORDER OF
DONALD AND BETTY WAGNER)	DETERMINATION
_____)	
)	Water Right Claim 192

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 December 6, 1990, DONALD AND BETTY WAGNER timely submitted a Statement and Proof of Claim (Claim 192) 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 192 was submitted for 4000 gallons per hour of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 1.0 acres with a season of use "June 1st Sept. 30." The claimed priority date is "October 26, 1872".
3. Item 14 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 # 192, Page 011).
4. DONALD WAGNER AND BETTY WAGNER signed the Statement and Proof of Claim for Claim 192 attesting that the information contained in the claim is true.
5. In 1999, a field inspection report, including a map, was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 192 (Claim 192, Pages 036-039).
6. 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.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3182 to the Claim and/or Preliminary Evaluation of Claim 192.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 37.
9. On January 2, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3182. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 2, 2002).
10. On February 13, 2002, Contest 3182 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).
11. Based on the sworn statements in Claim 192, 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 192 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 192

CLAIM MAP REFERENCE: CLAIM # 192, PAGE 037

CLAIMANT: DONALD AND BETTY WAGNER
PO BOX 34
KENO, OR 97627

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

PURPOSE or USE:

IRRIGATION OF 1.0 ACRES WITHIN LOT 10 IN BLOCK 2 OF THE RIVERSIDE ADDITION OF KENO.

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: JUNE 1 - SEPTEMBER 30

DATE OF PRIORITY: OCTOBER 26, 1872

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

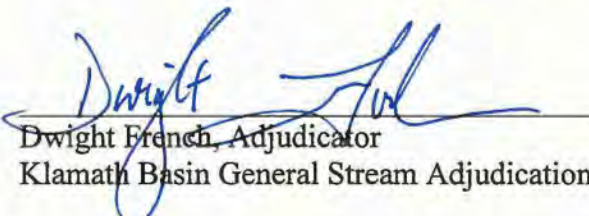
Twp	Rng	Mer	Sec	Q-Q	Location
39 S	8 E	WM	31	NW SW	SOUTH 37 DEGREES EAST, 1578 FEET FROM W ¼ CORNER, SECTION 31

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	NW SW	3600	1.0	Lot 10 in Block 2 of Riverside Addition to Keno

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication