



6. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The introductory (first) paragraph of the Amended Proposed Order is adopted with modifications, as set forth in Section A.7, below.
  - b. The “History of the Case” is adopted in its entirety.
  - c. The “Procedural Matters” is adopted in its entirety.
  - d. The “Evidentiary Rulings” is adopted in its entirety.
  - e. The “Issues” is adopted in its entirety.
  - f. The “Findings of Fact” is adopted in its entirety.
  - g. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, below.
  - h. The “Opinion” is adopted with modifications, as set forth in Section A.9, below.
  - i. The “Order” is adopted as in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. The outcome of the Order is without modification.

7. **Introductory Paragraph.** The first sentence within the first paragraph is modified as follows (deletions are shown in “~~striketrough~~” text):

After fully considering the entire record ~~and exceptions filed~~, the Adjudicator issues this AMENDED PROPOSED ORDER pursuant to OAR 137-003-0655(3). This AMENDED PROPOSED ORDER modifies the PROPOSED ORDER issued on January 9, 2004, by Administrative Law Judge William D. Young, and is not a final order subject to judicial review pursuant to ORS 183.480 or ORS 539.130.

**Reason for Modifications:** To make a correction raised in exceptions to the Amended Proposed Order; exceptions were not filed to the January 9, 2004 Proposed Order.

8. **Conclusions of Law.** Within the section titled “Conclusions of Law” of the Amended Proposed Order, Conclusion #6 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~striketrough~~” text):

(6) ~~An irrigation claim based on natural overflow is entitled as a matter of law to a Pre-1909 water right.~~ Beneficial use of water for irrigation by the method of natural overflow is a valid basis for a Pre-1909 water right.

**Reason for Modifications:** To correct and clarify the wording in Conclusions of Law #6, an issue raised in exceptions.

9. **Opinion.** The following paragraph (shown in “underline” text) is added at the end of the “Acreage entitled to the pre-1909 water right” subsection of the “Opinion” section:

Lot 9 totals 34.18 acres (OWRD Ex. 1 at 44), of which 3 acres are not irrigable (OWRD Ex. 1, page 8, 10) and 23 acres are irrigated from a point of

diversion (OWRD Ex. 1, pages 51, 58). The remaining 7.92 acres within Lot 9 are irrigated by the method of natural overflow (TR. Pg 14-15, 30-33).

**Reason for Modification:** To add clarification using evidence on the record.

## **B. DETERMINATION**

1. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The introductory (first) paragraph of the Amended Proposed Order is adopted with modifications, as set forth in Section A.7, above.
  - b. The “History of the Case” is adopted in its entirety.
  - c. The “Procedural Matters” is adopted in its entirety.
  - d. The “Evidentiary Rulings” is adopted in its entirety.
  - e. The “Issues” is adopted in its entirety.
  - f. The “Findings of Fact” is adopted in its entirety.
  - g. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, above.
  - h. The “Opinion” is adopted with modifications, as set forth in Section A.9, above.
  - i. The “Order” is adopted as in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. The outcome of the Order is without modification.
2. 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.
3. Beneficial use of water by the method of natural overflow is shown to be established for a portion of this claim.
4. Based on the file and record herein, IT IS ORDERED that Claim 201 is approved as set forth in the following Water Right Claim Description.

**CLAIM NO.** 201

**CLAIM MAP REFERENCE:** CLAIM # 201, PAGES 10 and 51

**CLAIMANT:** RICHARD W. BERG  
 PO BOX 54  
 KENO, OR 97627

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

**PURPOSE OR USE:**

IRRIGATION OF 23.00 ACRES FROM POD 1; AND IRRIGATION OF 7.92 ACRES BY NATURAL OVERFLOW; LIVESTOCK WATERING OF 12 HORSES INCIDENTAL TO IRRIGATION

**RATE OF USE OF WATER APPLIED FROM POD 1:**

0.64 CFS FROM POD 1 FOR IRRIGATION, 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 OF WATER APPLIED FROM POD 1:**

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

**PERIOD OF ALLOWED USE OF WATER APPLIED FROM POD 1:** APRIL 1 - OCTOBER 31

**DATE OF PRIORITY:** MARCH 30, 1905

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	40 S	8 E	WM	6	NW SE	9	2510 FEET NORTH AND 1990 FEET EAST FROM SE CORNER, SECTION 6
Natural Overflow	40 S	8 E	WM				No specific point of diversion; Natural Overflow

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING FROM POD 1						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	8 E	WM	6	NE SW	9	2.00
40 S	8 E	WM	6	NW SE	9	21.00
40 S	8 E	WM	6	NW SE	9	7.92

IRRIGATION BY NATURAL OVERFLOW WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	8 E	WM	6	NW SE	9	7.92

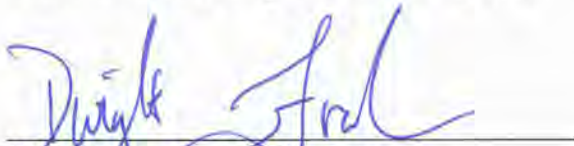
**FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:**

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: 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. THE DUTY FOR IRRIGATION MAY NOT EXCEED 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication