

**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
BARNEY CALMES AND)	DETERMINATION
DAISY CALMES)	
_____)	Water Right Claim 203

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE AMENDED PROPOSED ORDER**

1. Claim 203 (Claimants: BARNEY CALMES AND DAISY CALMES) and its associated contests (35, 3189, 3413, 3845, AND 4187) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 136.
2. Claim 203 was subsequently consolidated for hearing with Claims 206 and 207. Claim 203 is now unconsolidated for the purposes of issuing this Partial Order of Determination.
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 203, 206, and 207 on August 30, 2005.
4. Exceptions were filed to the Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.
5. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 203.
6. On April 4, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) (1) to modify the season of use for Claims 203, 206 and 207 because the seasons of use in the 2005 Proposed Order exceeded the claimed seasons of use, and (2) to correct and clarify the amounts of acreage irrigated by various sources of water and diversion points for Claims 203 and 207, (3) to modify the priority date of certain lands

in Claim 203, (4) to recognize abandonment of the right to irrigate on certain portions of Claim 207, (5) to modify the duty for Claims 203 and 207 because the duty in the 2005 Proposed Order exceeded the claimed duties, and (6) to limit Claims 203 and 207 to incidental livestock watering during the irrigation season. Except as modified, the Amended Proposed Order fully incorporated the 2005 Proposed Order.

7. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.
8. The exceptions filed to the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 203, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.
9. The evidentiary record for Claims 203, 206, and 207 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 203.
10. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, except as modified to correct three scrivener's errors pertaining to Claim 203 as discussed below.
 - a. *The modification made to the first paragraph of subsection D.2 contains an error in the 4th sentence (page 7 of the Amended Proposed Order). The modified sentence is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

With respect to the remaining ~~25.9~~ 25.2 acres from diversion point No. 1, and 72.5 acres from diversion point No. 2, the Preliminary Evaluation assigned a priority date of December 31, 1908.

Reason for Modification: Claim 203 is approved for a total 101.9 acres, being 72.5 acres irrigated from POD 2 and 29.4 acres from POD 1. Of the 29.4 acres irrigated from POD 1, 4.2 acres have a priority date of October 28, 1897. Therefore the remaining acres from diversion point No. 1 should be 25.2.

- b. *The Claim Description for Claim 203 contains two scrivener's errors in the "PURPOSE or USE" description. The Claim Description is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

PURPOSE OR USE:

IRRIGATION OF 101.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 300 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

~~30.4~~ 29.4 ACRES FROM POD 1, AND

~~71.8~~ 72.5 ACRES FROM POD 2.

Reason for Modification: On page 5 of the Amended Proposed Order, in the additional Finding of Fact #9 it was found that 0.7 acres was irrigated from POD 2 rather than from POD 1. Although shown correctly in the Place of Use table, this adjustment failed to be made in the “Purpose or Use” within the Claim Description.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein except as modified to correct the three scrivener’s errors discussed in Section A.10, above.
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. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. Based on the file and record herein, IT IS ORDERED that Claim 203 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 203

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 8 E

CLAIMANT: BARNEY CALMES
DAISLY CALMES
PO BOX 42
KENO OR 97627-0042

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

PURPOSE OR USE:

IRRIGATION OF 101.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 300 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

29.4 ACRES FROM POD 1, AND

72.5 ACRES FROM POD 2.

RATE OF USE:

2.38 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.75 CFS FROM POD 1 AND 1.63 CFS FROM POD 2.

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:

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

PERIOD OF ALLOWED USE: APRIL 1 - NOVEMBER 15

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

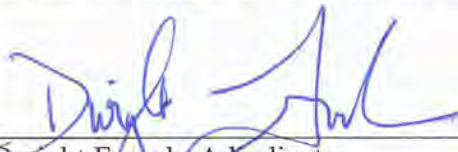
POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	40 S	8 E	WM	16	SE NW	13	3760 FEET SOUTH AND 5830 FEET EAST FROM NW CORNER, SESW, SECTION 8
POD 2	40 S	8 E	WM	16	NE SW	14	NONE GIVEN

DATES OF PRIORITY AND THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING								
PRIORITY DATE	Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
October 28, 1897	40 S	8 E	WM	16	SW NW	12	1.7	POD 1
October 28, 1897	40 S	8 E	WM	17	NE NE	3	1.0	
December 31, 1908	40 S	8 E	WM	17	NE NE	1	1.9	
December 31, 1908	40 S	8 E	WM	17	NW NE		0.1	
December 31, 1908	40 S	8 E	WM	17	SW NE		0.8	
December 31, 1908	40 S	8 E	WM	17	SW NE		8.4	
December 31, 1908	40 S	8 E	WM	17	SE NE	2	10.8	
October 28, 1897	40 S	8 E	WM	17	SE NE	3	1.5	
December 31, 1908	40 S	8 E	WM	17	NE NW		2.2	
December 31, 1908	40 S	8 E	WM	17	SE NW		1.0	
December 31, 1908	40 S	8 E	WM	16	SW NW	1	11.2	POD 2
October 28, 1897	40 S	8 E	WM	16	SW NW	12	7.5	
October 28, 1897	40 S	8 E	WM	16	SE NW	13	3.6	
October 28, 1897	40 S	8 E	WM	16	NE SW	14	3.0	
December 31, 1908	40 S	8 E	WM	16	NE SW	2	14.9	
December 31, 1908	40 S	8 E	WM	16	NW SW		14.3	
December 31, 1908	40 S	8 E	WM	16	SW SW		3.2	
December 31, 1908	40 S	8 E	WM	16	SE SW	3	14.1	
December 31, 1908	40 S	8 E	WM	17	SE NE	2	0.7	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication