

**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
KITE RANCHES, INC)	DETERMINATION
)	
_____)	Water Right Claim 207

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 207 (Claimants: KITE RANCHES, INC.) and its associated contests (34, 2857, 3193, 3414, 3848, AND 4190) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 136.
2. Claim 207 was subsequently consolidated for hearing with Claims 203 and 206. Claim 207 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 206.
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 207, 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 207.
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 207 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 207

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 40 S, R 8 E; and CLAIM # 207, PAGE 23

CLAIMANT: KITE RANCHES INC.

PO BOX 175
KENO, OR 97627

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

PURPOSE OR USE:

IRRIGATION OF 648.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 600 PAIR FOR ENTIRE CLAIM, AS FOLLOWS:

206.8 ACRES FROM PODS 1, 2, AND 4, AND

441.2 ACRES FROM PODS 5, 6, AND 7.

RATE OF USE:

16.2 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 5.17 CFS OF WATER COMBINED FROM PODS 1, 2, AND 4, AND 11.03 CFS OF WATER COMBINED FROM PODS 5, 6, AND 7.

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 15 - NOVEMBER 15

DATE OF PRIORITY: OCTOBER 28, 1897

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	6	NE SE	10	2510 FEET NORTH AND 1280 FEET WEST FROM SW CORNER, SECTION 5
POD 2	40 S	8 E	WM	6	SE NE	11	2770 FEET NORTH AND 990 FEET WEST FROM SW CORNER, SECTION 5
POD 4	40 S	8 E	WM	5	NE SW	12	1320 FEET NORTH AND 2000 FEET EAST FROM SW CORNER, SECTION 5
POD 5	40 S	8 E	WM	8	SE NE	6	1580 FEET NORTH AND 3480 FEET EAST FROM NW CORNER, SESW, SECTION 8
POD 6	40 S	8 E	WM	9	SE SW	7	870 FEET SOUTH AND 5480 FEET EAST FROM NW CORNER, SESW, SECTION 8
POD 7	40 S	8 E	WM	16	SE NW	13	3760 FEET SOUTH AND 5830 FEET EAST FROM NW CORNER, SESW, SECTION 8


THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized PODS
40 S	8 E	WM	5	SW NW	10	16.8	PODS 1, 2, 4
40 S	8 E	WM	5	NE SW	12	3.5	
40 S	8 E	WM	5	NW SW		31.9	
40 S	8 E	WM	6	SE NE	11	14.4	
40 S	8 E	WM	6	SE NE		3.1	
40 S	8 E	WM	6	NE SE	10	36.0	
40 S	8 E	WM	6	SW SE	8	16.3	
40 S	8 E	WM	6	SE SE		40.0	
40 S	8 E	WM	7	NE NE	6	33.8	
40 S	8 E	WM	7	NW NE	6	11.0	

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							Authorized PODS
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	
40 S	8 E	WM	8	NE NE		1.3	PODS 5, 6, 7
40 S	8 E	WM	8	NE NE	7	6.0	
40 S	8 E	WM	8	NW NE	8	18.0	
40 S	8 E	WM	8	NW NE		1.8	
40 S	8 E	WM	8	SW NE		40.0	
40 S	8 E	WM	8	SE NE	6	22.5	
40 S	8 E	WM	8	SE SW	11	14.5	
40 S	8 E	WM	8	SE SW	2	25.5	
40 S	8 E	WM	8	NE SE	5	39.0	
40 S	8 E	WM	8	NE SE		0.20	
40 S	8 E	WM	8	NW SE		39.4	
40 S	8 E	WM	8	SW SE	3	8.1	
40 S	8 E	WM	8	SW SE	12	31.9	
40 S	8 E	WM	8	SE SE	4	37.9	
40 S	8 E	WM	9	NE SW	6	0.2	
40 S	8 E	WM	9	NW SW	6	19.5	
40 S	8 E	WM	9	NW SW		0.4	
40 S	8 E	WM	9	SW SW		32.3	
40 S	8 E	WM	9	SE SW	7	5.0	
40 S	8 E	WM	16	NW NW	11	20.8	
40 S	8 E	WM	16	SW NW	12	6.7	
40 S	8 E	WM	17	NE NE	3	24.6	
40 S	8 E	WM	17	NE NE	1	0.3	
40 S	8 E	WM	17	NW NE		20.1	
40 S	8 E	WM	17	SW NE		1.9	
40 S	8 E	WM	17	SE NE	2	1.5	
40 S	8 E	WM	17	SE NE	3	0.1	
40 S	8 E	WM	17	NE NW		21.7	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication