

**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 the	)	PARTIAL ORDER OF
UNITED STATES DEPARTMENT OF	)	DETERMINATION
INTERIOR, U.S. NATIONAL PARK	)	
SERVICE	)	
_____	)	Water Right Claim 599

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 April 30, 1997, the UNITED STATES DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE (USNPS) timely submitted a Statement and Proof of Claim (Claim 599) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication claiming a federal reserved water right under the Act of May 22, 1902, ch. 820, §1, 32 Stat. 202; the Act of Aug. 25, 1916, ch. 408, §2, 39 Stat. 535 (National Park Service Organic Act); the Act of May 14, 1932, ch 184, 47 Stat. 155; the U.S. DISTRICT COURT OF OREGON, FINAL JUDGMENT NO. CIV-424 (C.C. Yawkey, *et al.*, Dec. 5, 1940); the U.S. DISTRICT COURT OF OREGON, NO. CIV-785, JUDGMENT ON THE DECLARATION OF TAKING AND AMENDED DECLARATION OF TAKING (Gladstone Land and Timber Co., Jan. 30, 1942); Pub. L. No. 96-553, 94 Stat. 3255 (Dec. 19, 1980); and Pub.L. No. 97-250, 96 Stat. 709 (Sept. 8, 1982).
2. On October 1, 1999, the USNPS timely amended Claim 599 to show the claimed priority date for each subdivision of a reach.
3. 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.
4. On May 5, 2000, the Claimant, USNPS, timely filed Contest 3943 to the Preliminary Evaluation of Claim 599.
5. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3013 to the Claim and/or Preliminary Evaluation of Claim 599.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as “Nicholson *et al.*,” filed Contest 3114 to the Claim and/or Preliminary Evaluation of Claim 599: Roger Nicholson; Roger Nicholson Cattle Co.<sup>1</sup>; Lloyd Nicholson Trust<sup>2</sup>; Dorothy Nicholson Trust<sup>3</sup>; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches<sup>4</sup>; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company<sup>5</sup>; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood; Kenneth Zamzow; Anita Nicholson<sup>6</sup>; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood<sup>7</sup>; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; and Dwight T. Mebane and Helen Mebane<sup>8</sup>.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters and other like claims of the USNPS as Case 001.
8. On August 2, 2001, OWRD, the Claimants (USNPS) and the Contestants (WaterWatch, and Nicholson *et al.*) executed a STIPULATION (Settlement Agreement) which resolved the Contests 3013, 3114, and 3943 to Claim 599.
9. On August 2, 2001, the Claims 591-601 were withdrawn from the Office of Administrative Hearings pursuant to the Settlement Agreement.
10. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS the date of reservation is the priority date of a federal reserved water right. This claim has the following reservation dates: May, 22, 1902, based on the ACT OF MAY 22, 1902, CH. 820, §1, 32 STAT. 202 and December 5, 1940, based on U.S. DISTRICT COURT OF OREGON, FINAL JUDGMENT NO. CIV-424.

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<sup>1</sup> Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

<sup>2</sup> Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

<sup>3</sup> Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

<sup>4</sup> Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Jim McAuliffe and McAuliffe Ranches

<sup>5</sup> Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Joe McAuliffe Company

<sup>6</sup> Nicholson Investments, LLC, successor in interest to Anita Nicholson

<sup>7</sup> On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3114. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

<sup>8</sup> Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane.

## B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants (USNPS) and the Contestants (WaterWatch, and Nicholson *et al.*) is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The combination of the ACT OF MAY 22, 1902, CH. 820, §1, 32 STAT. 202; the ACT OF AUG. 25, 1916, CH. 408, §2, 39 STAT. 535; FINAL JUDGMENT NO. CIV-424 (Dec. 5, 1940); and PUB. L. NO. 97-250, 96 STAT. 709 (Sept. 8, 1982) are valid bases for this federal reserved water right claim, including the claimed purposes of use. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.
4. Based on the file and record herein, IT IS ORDERED that Claim 599 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 599**

**CLAIM MAP REFERENCE:** USNPS MYLAR MAPS FILED 10-1-1999

**CLAIMANT:** UNITED STATES DEPARTMENT OF INTERIOR  
U.S. NATIONAL PARK SERVICE  
1201 OAKRIDGE DR, SUITE 250  
FORT COLLINS, CO 80525

**SOURCE OF WATER:**  
SUN CREEK AND ITS TRIBUTARIES WITHIN THE BOUNDARY OF CRATER LAKE  
NATIONAL PARK, tributary to ANNIE CREEK

**PURPOSE OR USE:**  
PRESERVATION AND PROTECTION OF ALL NATURAL AND HISTORIC OBJECTS,  
TIMBER AND WILDLIFE, AND CONSERVATION OF SCENERY

**RATE:**  
ALL NATURAL FLOW LESS THOSE AMOUNTS NEEDED FOR CRATER LAKE  
NATIONAL PARK OUT-OF-STREAM USES

**PERIOD OF ALLOWED USE:** JANUARY 1 – DECEMBER 31

**DATE OF PRIORITY AND THE PLACE OF USE IS LOCATED AS FOLLOWS:**

<b>MAINSTEM SUN CREEK - REACH A</b>							
<b>Priority Date</b>		<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Approx River Mile*</b>
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	10		9.1
	Lower Reach Boundary	32 S	7.5 E	WM	6	NWSE	2.1
<b>MAINSTEM SUN CREEK - REACH B</b>							
December 5, 1940	Upper Reach Boundary	32 S	7.5 E	WM	6	NWSE	2.1
	Lower Reach Boundary	32 S	7.5 E	WM	17	NWNW	0.1
<b>MAINSTEM SUN CREEK - REACH C</b>							
May 22, 1902	Upper Reach Boundary	32 S	7.5 E	WM	17	NWNW	0.1
	Lower Reach Boundary	32 S	7.5 E	WM	17	SENW	0.0


\*River miles are measured upstream from the Crater Lake National Park boundary.

<b>VIDAE CREEK</b>						
<b>Priority Date</b>		<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Approx River Mile*</b>
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	15	0.7
	Lower Reach Boundary	31 S	6 E	WM	22	0.0

\*River miles are measured upstream from the confluence of Vidae Creek with Sun Creek

[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