

**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
AGRICULTURE, FOREST SERVICE	)	
	)	
	)	Water Right Claim 378

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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 29, 1997, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS) timely submitted a Statement and Proof of Claim (Claim 378) 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 Organic Administration Act of 1897, 16 U.S.C. §§ 473-475, 477-482 and 551 (Organic Act), and under the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-531(MUSYA).
2. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the portion of the claim under the Organic Act was approved and the portion of the claim under MUSYA was denied.
3. On May 5, 2000, the Claimant, USFS, timely filed Contest 2071 to the Preliminary Evaluation of Claim 378.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 50 to the Claim and/or Preliminary Evaluation of Claim 378.
5. On May 1, 2000, Leonard Baio timely filed Contest 284 to the Claim and/or Preliminary Evaluation of Claim 378.
6. On May 2, 2000, Gary Strong timely filed Contest 519 to the Claim and/or Preliminary Evaluation of Claim 378.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 752 to the Claim and/or Preliminary Evaluation of Claim 378.
8. On May 2, 2000, Robert Bartell timely filed Contest 989 to the Claim and/or Preliminary Evaluation of Claim 378.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1224 to the Claim and/or Preliminary Evaluation of Claim 378.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1458 to the Claim and/or Preliminary Evaluation of Claim 378.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1807 to the Claim and/or Preliminary Evaluation of Claim 378.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2259 to the Claim and/or Preliminary Evaluation of Claim 378.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2495 to the Claim and/or Preliminary Evaluation of Claim 378.
14. On May 8, 2000, John Briggs timely filed Contest 4247 to the Claim and/or Preliminary Evaluation of Claim 378.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4481 to the Claim and/or Preliminary Evaluation of Claim 378.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4714 to the Claim and/or Preliminary Evaluation of Claim 378.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4955 to the Claim and/or Preliminary Evaluation of Claim 378.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5190 to the Claim and/or Preliminary Evaluation of Claim 378.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5423 to the Claim and/or Preliminary Evaluation of Claim 378.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3669: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co., Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don

Johnston & Son, Modoc Lumber Co., Bradley S. Luscombe, Berlva Pritchard<sup>1</sup>, Don Vincent<sup>2</sup>, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

21. 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 USFS as Case 007.
22. On July 2, 2002, the following contestants withdrew with prejudice their respective contest: Leonard Baio, Gary Strong, Flynn Brothers, Robert Bartell, Margaret Jacobs, Carolyn Obenchain, Rodney Z. James, Newman Enterprise (Douglas Newman), Francis Loving Trust, Hilda Francis Trustee, John Briggs, Peter M. Bourdet, Vincent Lee Briggs, Thomas William Mallams, Thomas H. Bentley, Thomas E. Stephens, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL*'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
23. On December 26, 2002, the Klamath Project Water Users withdrew with prejudice Contest 3669. *See* WITHDRAWAL OF KLAMATH PROJECT WATER USER'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 26, 2002).
24. On December 30, 2002, the USFS amended Claim 378 by reducing the claim as follows: The "[p]ortion of this claim based on the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 *et seq.* is deleted," and the rate was reduced "from 14.953 cfs as originally claimed, to 13.766 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2071, the remaining contest to Claim 378. *See* UNITED STATES NOTICE OF WITHDRAWAL OF CONTESTS (Mar. 11, 2003).
26. On April 2, 2003, the Adjudicator withdrew Case 007 from the Office of Administrative Hearings.
27. The place of use underlying Claim 378 is within a federal reservation of land that is owned by the Claimant.
28. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897, the date of reservation is the priority date of a federal reserved water right. This claim contains four reservation dates as follows: (1) the reservation date of September 17, 1906 is based on the Presidential Proclamation of September 17, 1906, (2) the reservation date of May 14, 1930 is based on the Act of May 14, 1930, P.L. No. 214, 46 Stat.278 (1930), (3) the reservation date of April 15,

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<sup>1</sup> Berlva Pritchard voluntarily withdrew from Contest 3669 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>2</sup> Don Vincent voluntarily withdrew from Contest 3669 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

1961 is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961), and (4) the reservation date of November 15, 1974 is based on a Declaration of Taking, November 15, 1974, Civil No. 74-894, U.S. District Court of Oregon. The priority date applicable to each aspect of the claim is set forth in the Water Right Claim Description below.

29. The rate, maximum acre-feet per year allowed, and season of use claimed, as amended by the USFS on December 30, 2002, are no more than necessary to fulfill the primary purposes of the reservation.

## **B. DETERMINATION**

1. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim, including the claimed purposes of use. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
2. Based on the file and record herein, IT IS ORDERED that Claim 378 is approved as amended by the USFS and as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 378**

**CLAIM MAP REFERENCE:**

USFS MAPS FILED 1997, 97-402-0146 through 97-402-0156 (A2);  
MYLAR FILED AS CLAIM # 377, PAGES 173 THROUGH 266; and  
OWRD INVESTIGATION MAPS

**CLAIMANT:** UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
1220 SW 3<sup>RD</sup> ROOM 1734  
PORTLAND, OR 97204

**PURPOSE or USE:**

ROAD CONSTRUCTION, MAINTENANCE AND DUST SUPPRESSION OF ROADS  
NECESSARY FOR TIMBER PRODUCTION, TIMBER HARVESTING, AND PROTECTION  
FROM FIRE; AND

FIRE SUPPRESSION; AND

ADMINISTRATIVE USE ONLY FOR: Johnson Meadow Spring (USFS-ID1003).

**PERIOD OF ALLOWED USE:** MARCH 1 THROUGH NOVEMBER 30

**RATE OF USE:**

THE RATE OF USE IS AS FOLLOWS, NOT TO EXCEED A TOTAL OF 13.766 CUBIC FEET PER SECOND (CFS):

**THE SOURCES OF WATER, DATES OF PRIORITY, RATE OF USE (CFS), MAXIMUM ACRE-FEET PER YEAR ALLOWED (AF/Year), AND POINTS OF DIVERSION LOCATIONS ARE AS FOLLOWS:**

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to the Williamson River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
1323	Cat Sunk Pond	May 14, 1930	0.223	2.2	26 S	9 E	WM	23	SE NE
1046	West Fork Jack Creek Binwall	May 14, 1930	1.114	11.0	26 S	9 E	WM	33	NW NW
1321	Crooked Meadow Binwall	May 14, 1930	0.557	5.5	26 S	10 E	WM	19	LOT 1 (NE NW)
1319	Pumice Puddle	May 14, 1930	0.223	2.2	26 S	10 E	WM	30	SE NE
1002	Johnson Meadow Stock Tank	May 14, 1930	0.223	2.2	27 S	9 E	WM	1	SE NE
1003	Johnson Meadow Spring	May 14, 1930	0.06	n/a	27 S	9 E	WM	1	SW NE
1316	Jack Creek Div	May 14, 1930	0.223	2.2	27 S	9 E	WM	2	SW SE
1356	Jack Creek	Sept. 17, 1906	1.114	11.0	27 S	10 E	WM	19	NE SE
1355	Helen's Hot Spot	Sept. 17, 1906	1.114	11.0	27 S	10 E	WM	20	SW NW
1352	South Davis Flat	Sept. 17, 1906	1.114	11.0	27 S	10 E	WM	32	SE SE
1325	Clearly Pond	May 14, 1930	0.223	2.2	28 S	10 E	WM	2	SW SE
1324	Bartley HQ Pond	May 14, 1930	0.557	5.5	28 S	10 E	WM	14	NW NE
1346	Bullfrog Spring	May 14, 1930	0.557	5.5	28 S	10 E	WM	15	SE NE
1345	Lily Camp Binwall	May 14, 1930	0.557	5.5	28 S	10 E	WM	23	NW SW
1361	Deer Scaffold Spring	April 15, 1961	0.223	2.2	29 S	10 E	WM	22	SE NE
1358	Marvelous Meadow	April 15, 1961	0.223	2.2	29 S	10 E	WM	27	NE NE
1334	Knight Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	2	SE SW
1537	Jackson Creek CG	April 15, 1961	0.223	2.2	30 S	11 E	WM	7	NW SE
1338	Lower Jackson Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	7	SE NE
1339	Hoyt Ranch	April 15, 1961	0.557	5.5	30 S	11 E	WM	7	SW SE
1337	Middle Jackson Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	8	SW NE
1335	North Jackson Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	14	NW NE
1336	North Jackson Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	14	SW NE
1351	Lower Irving Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	19	SE SW
1332	Lower Modoc Creek	April 15, 1961	0.557	5.5	30 S	11 E	WM	30	NE SW
1333	Upper Modoc Creek	April 15, 1961	0.223	2.2	30 S	11 E	WM	34	NE NW
1075	Deep Creek	April 15, 1961	0.557	5.5	31 S	11 E	WM	29	NW SE

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to the Williamson River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
1083	CLVRT Telephone Draw	Nov. 15, 1974	0.223	2.2	32 S	10 E	WM	15	NW SW
1022	Wildhorse Spring	Nov. 15, 1974	0.223	2.2	33 S	10 E	WM	25	SE NE
1025	Head of the River Spring	April 15, 1961	1.114	11.0	33 S	11 E	WM	9	NE NW
1068	Yamsay Reservoir	April 15, 1961	0.223	2.2	33 S	11 E	WM	14	NE NE
1065	Bottle Spring Reservoir	April 15, 1961	0.223	2.2	33 S	11 E	WM	24	SE NE


**THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:**

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1323	Cat Sunk Pond	26 S	9 E	WM	23	SE NE
1046	West Fork Jack Creek Binwall	26 S	9 E	WM	33	NW NW
1321	Crooked Meadow Binwall	26 S	10 E	WM	19	LOT 1 (NE NW)
1319	Pumice Puddle	26 S	10 E	WM	30	SE NE
1002	Johnson Meadow Stock Tank	27 S	9 E	WM	1	SE NE
1003	Johnson Meadow Spring	27 S	9 E	WM	1	SW NE
1316	Jack Creek Div	27 S	9 E	WM	2	SW SE
1356	Jack Creek	27 S	10 E	WM	19	NE SE
1355	Helen's Hot Spot	27 S	10 E	WM	20	SW NW
1352	South Davis Flat	27 S	10 E	WM	32	SE SE
1325	Clearly Pond	28 S	10 E	WM	2	SW SE
1324	Bartley HQ Pond	28 S	10 E	WM	14	NW NE
1346	Bullfrog Spring	28 S	10 E	WM	15	SE NE
1345	Lily Camp Binwall	28 S	10 E	WM	23	NW SW
1361	Deer Scaffold Spring	29 S	10 E	WM	22	SE NE
1358	Marvelous Meadow	29 S	10 E	WM	27	NE NE
1334	Knight Creek	30 S	11 E	WM	2	SE SW
1537	Jackson Creek CG	30 S	11 E	WM	7	NW SE
1338	Lower Jackson Creek	30 S	11 E	WM	7	SE NE
1339	Hoyt Ranch	30 S	11 E	WM	7	SW SE
1337	Middle Jackson Creek	30 S	11 E	WM	8	SW NE
1335	North Jackson Creek	30 S	11 E	WM	14	NW NE
1336	North Jackson Creek	30 S	11 E	WM	14	SW NE
1351	Lower Irving Creek	30 S	11 E	WM	19	SE SW

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1332	Lower Modoc Creek	30 S	11 E	WM	30	NE SW
1333	Upper Modoc Creek	30 S	11 E	WM	34	NE NW
1075	Deep Creek	31 S	11 E	WM	29	NW SE
1083	CLVRT Telephone Draw	32 S	10 E	WM	15	NW SW
1022	Wildhorse Spring	33 S	10 E	WM	25	SE NE
1025	Head of the River Spring	33 S	11 E	WM	9	NE NW
1068	Yamsay Reservoir	33 S	11 E	WM	14	NE NE
1065	Bottle Spring Reservoir	33 S	11 E	WM	24	SE NE

[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