

**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 379

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 379) 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 2072 to the Preliminary Evaluation of Claim 379.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 51 to the Claim and/or Preliminary Evaluation of Claim 379.
5. On May 1, 2000, Leonard Baio timely filed Contest 285 to the Claim and/or Preliminary Evaluation of Claim 379.
6. On May 2, 2000, Gary Strong timely filed Contest 520 to the Claim and/or Preliminary Evaluation of Claim 379.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 753 to the Claim and/or Preliminary Evaluation of Claim 379.
8. On May 2, 2000, Robert Bartell timely filed Contest 990 to the Claim and/or Preliminary Evaluation of Claim 379.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1225 to the Claim and/or Preliminary Evaluation of Claim 379.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1459 to the Claim and/or Preliminary Evaluation of Claim 379.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1808 to the Claim and/or Preliminary Evaluation of Claim 379.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2260 to the Claim and/or Preliminary Evaluation of Claim 379.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2496 to the Claim and/or Preliminary Evaluation of Claim 379.
14. On May 8, 2000, John Briggs timely filed Contest 4248 to the Claim and/or Preliminary Evaluation of Claim 379.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4482 to the Claim and/or Preliminary Evaluation of Claim 379.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4715 to the Claim and/or Preliminary Evaluation of Claim 379.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4956 to the Claim and/or Preliminary Evaluation of Claim 379.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5191 to the Claim and/or Preliminary Evaluation of Claim 379.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5424 to the Claim and/or Preliminary Evaluation of Claim 379.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3670: 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 Pritchard¹, Don

¹ Berlva Pritchard voluntarily withdrew from Contest 3670 on June 24, 2002. See NOTICE OF WITHDRAWAL OF CLAIMANT.

Vincent², 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 3670. *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 379 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 20.798 cfs as originally claimed, to 20.34 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2072, the remaining contest to Claim 379. *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 379 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 June 4, 1897 is based on Presidential Proclamation of September 28, 1893, No 6, 28 Stat. 1240 and the Organic Administration Act of June 4, 1897, 16 U.S.C. §§ 473-475, 477-482 and 551, (2) the reservation date of September 17, 1906 is based on the Presidential Proclamation of September 17, 1906, (3) the reservation date of January 25, 1907 is based on a Presidential Proclamation of January 25, 1907, and (4) the reservation date of April 15, 1961 is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961). The priority date applicable to each aspect of the claim is set forth in the Water Right Claim Description below.

² Don Vincent voluntarily withdrew from Contest 3670 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.
PARTIAL ORDER OF DETERMINATION

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 379 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. 379

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-403-0162 THROUGH 97-403-0178 (A3);
MYLAR FILED AS CLAIM # 377, PAGES 173 THROUGH 266; and
OWRD INVESTIGATION MAPS

CLAIMANT: UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
1220 SW 3RD 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: John Cole Spring (USFS-ID1062).

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 20.34 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								
1350	Head of Deer Creek	Jan. 25, 1907	0.223	2.2	27 S	7 E	WM	6	NW NW
1307	Fork of Deer Creek	Jan. 25, 1907	0.223	2.2	27 S	7 E	WM	10	NE NW
1314	Deer Creek Road 1	Jan. 25, 1907	0.223	2.2	27 S	7 E	WM	14	NE NW
1288	Frost Pond	Jan. 25, 1907	0.223	2.2	27 S	7 E	WM	21	NW SW
1312	Red Cone Spring	Jan. 25, 1907	0.223	2.2	27 S	7 E	WM	22	NW NE
1313	Deer Creek Road 2	Jan. 25, 1907	0.223	2.2	27 S	7 E	WM	24	NW NE
1287	Lower Swiss Spring	Jan. 25, 1907	1.114	11	27 S	7 E	WM	27	SW NW
1357	Dempsey Spring Reservoir	Sept. 17, 1906	1.114	11	27 S	9 E	WM	23	SE SE
1289	Miller Creek	June 4, 1897	0.557	5.5	27 S	6.5 E	WM	13	LOT 4 (NE SE)
1290	Miller Lake	June 4, 1897	0.557	5.5	27 S	6.5 E	WM	14	NE NW
1295	Cottonwood Creek	June 4, 1897	1.114	11	28 S	6 E	WM	26	NE NW
1309	Tiny Creek	June 4, 1897	0.557	5.5	28 S	6 E	WM	33	NE NE
1331	Lost Creek Spring Culvert	Jan. 25, 1907	1.114	11	28 S	8 E	WM	13	SE SE
1330	Alberta Camp	Jan. 25, 1907	0.223	2.2	28 S	8 E	WM	24	NW SE
1349	Little Round Meadow	Sept. 17, 1906	1.114	11	28 S	9 E	WM	1	SE NE
1329	Bootleg Spring	Sept. 17, 1906	0.557	5.5	28 S	9 E	WM	3	SW SE
1328	Coyote Spring	Sept. 17, 1906	0.223	2.2	28 S	9 E	WM	9	NE SW
1449	Shoestring Spring	Sept. 17, 1906	0.557	5.5	28 S	9 E	WM	32	NW NW
1042	Round Butte Pond	Sept. 17, 1906	0.223	2.2	29 S	9 E	WM	5	SW NE
1038	Log Spring	Sept. 17, 1906	0.223	2.2	29 S	9 E	WM	6	SW NE
1039	Narrow Creek	April 15, 1961	0.557	5.5	29 S	9 E	WM	10	NW SE
1034	Middle Lane Creek	April 15, 1961	0.223	2.2	29 S	9 E	WM	11	NW NW
1035	Lower Lane Creek	April 15, 1961	0.223	2.2	29 S	9 E	WM	11	NE SW
1031	Lower God Creek	April 15, 1961	0.223	2.2	29 S	9 E	WM	13	SW NW
1032	Upper God Creek	April 15, 1961	0.223	2.2	29 S	9 E	WM	13	SE NE
1033	Pond	April 15, 1961	0.223	2.2	29 S	9 E	WM	13	NE NW
1030	Lower Mosquito Creek	April 15, 1961	0.223	2.2	29 S	9 E	WM	24	NW SE
1028	Sheep Spring Ponds	April 15, 1961	0.223	2.2	29 S	10 E	WM	7	LOT 1 (NW NW)
1360	Bedpan Spring	April 15, 1961	0.223	2.2	29 S	10 E	WM	32	SW NW
1305	Bear Creek	June 4, 1897	0.223	2.2	30 S	6 E	WM	11	SE SW
1302	Pothole Creek Div 7	June 4, 1897	0.223	2.2	30 S	6 E	WM	25	SE 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								
1303	Pothole Creek Div 6	June 4, 1897	0.223	2.2	30 S	6 E	WM	25	SW SE
1304	Pothole Creek Div 5	June 4, 1897	0.223	2.2	30 S	6 E	WM	26	NE SE
1293	Lower Bear Creek II	Jan. 25, 1907	1.114	11	30 S	7 E	WM	6	NW NW
1301	Pothole	April 15, 1961	0.223	2.2	30 S	7 E	WM	27	SW SW
1007	Ora Summers Pond	April 15, 1961	0.557	5.5	30 S	9 E	WM	36	NE SE
1008	Blue Jay Too	April 15, 1961	1.114	11	30 S	10 E	WM	33	NW SE
1020	Blue Jay Spring	April 15, 1961	0.557	5.5	30 S	10 E	WM	33	NW NE
1362	Scott Creek Camp	Jan. 25, 1907	0.223	2.2	31 S	7 E	WM	18	NW SE
1005	Skellock Draw	April 15, 1961	0.557	5.5	31 S	9 E	WM	13	NW SE
1306	Skellock Draw Pond	April 15, 1961	0.223	2.2	31 S	9 E	WM	15	SW NE
1062	John Cole Spring	April 15, 1961	0.06	n/a	31 S	9 E	WM	33	NW SE
1006	Skellock Creek	April 15, 1961	0.557	5.5	31 S	10 E	WM	9	SE NW
1089	Meadow Creek	April 15, 1961	0.557	5.5	31 S	10 E	WM	21	SE SE
1363	Upper Scott Creek	Jan. 25, 1907	0.223	2.2	31 S	7.5 E	WM	10	SE NW
1058	Yoss Creek	April 15, 1961	0.557	5.5	32 S	9 E	WM	9	SW NE


THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1350	Head of Deer Creek	27 S	7 E	WM	6	NW NW
1307	Fork of Deer Creek	27 S	7 E	WM	10	NE NW
1314	Deer Creek Road 1	27 S	7 E	WM	14	NE NW
1288	Frost Pond	27 S	7 E	WM	21	NW SW
1312	Red Cone Spring	27 S	7 E	WM	22	NW NE
1313	Deer Creek Road 2	27 S	7 E	WM	24	NW NE
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1290	Miller Lake	27 S	6.5 E	WM	14	NE NW
1295	Cottonwood Creek	28 S	6 E	WM	26	NE NW
1309	Tiny Creek	28 S	6 E	WM	33	NE NE
1331	Lost Creek Spring Culvert	28 S	8 E	WM	13	SE SE
1330	Alberta Camp	28 S	8 E	WM	24	NW SE
1349	Little Round Meadow	28 S	9 E	WM	1	SE NE
1329	Bootleg Spring	28 S	9 E	WM	3	SW SE
1328	Coyote Spring	28 S	9 E	WM	9	NE SW

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
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1038	Log Spring	29 S	9 E	WM	6	SW NE
1039	Narrow Creek	29 S	9 E	WM	10	NW SE
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1031	Lower God Creek	29 S	9 E	WM	13	SW NW
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1028	Sheep Spring Ponds	29 S	10 E	WM	7	LOT 1 (NW NW)
1360	Bedpan Spring	29 S	10 E	WM	32	SW NW
1305	Bear Creek	30 S	6 E	WM	11	SE SW
1302	Pothole Creek Div 7	30 S	6 E	WM	25	SE SE
1303	Pothole Creek Div 6	30 S	6 E	WM	25	SW SE
1304	Pothole Creek Div 5	30 S	6 E	WM	26	NE SE
1293	Lower Bear Creek II	30 S	7 E	WM	6	NW NW
1301	Pothole	30 S	7 E	WM	27	SW SW
1007	Ora Summers Pond	30 S	9 E	WM	36	NE SE
1008	Blue Jay Too	30 S	10 E	WM	33	NW SE
1020	Blue Jay Spring	30 S	10 E	WM	33	NW NE
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1306	Skellock Draw Pond	31 S	9 E	WM	15	SW NE
1062	John Cole Spring	31 S	9 E	WM	33	NW SE
1006	Skellock Creek	31 S	10 E	WM	9	SE NW
1089	Meadow Creek	31 S	10 E	WM	21	SE SE
1363	Upper Scott Creek	31 S	7.5 E	WM	10	SE NW
1058	Yoss Creek	32 S	9 E	WM	9	SW NE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication