

**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 380

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 380) 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 2073 to the Preliminary Evaluation of Claim 380.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 52 to the Claim and/or Preliminary Evaluation of Claim 380.
5. On May 1, 2000, Leonard Baio timely filed Contest 286 to the Claim and/or Preliminary Evaluation of Claim 380.
6. On May 2, 2000, Gary Strong timely filed Contest 521 to the Claim and/or Preliminary Evaluation of Claim 380.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 754 to the Claim and/or Preliminary Evaluation of Claim 380.

8. On May 2, 2000, Robert Bartell timely filed Contest 991 to the Claim and/or Preliminary Evaluation of Claim 380.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1226 to the Claim and/or Preliminary Evaluation of Claim 380.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1460 to the Claim and/or Preliminary Evaluation of Claim 380.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1809 to the Claim and/or Preliminary Evaluation of Claim 380.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2261 to the Claim and/or Preliminary Evaluation of Claim 380.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2497 to the Claim and/or Preliminary Evaluation of Claim 380.
14. On May 8, 2000, John Briggs timely filed Contest 4249 to the Claim and/or Preliminary Evaluation of Claim 380.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4483 to the Claim and/or Preliminary Evaluation of Claim 380.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4716 to the Claim and/or Preliminary Evaluation of Claim 380.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4957 to the Claim and/or Preliminary Evaluation of Claim 380.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5192 to the Claim and/or Preliminary Evaluation of Claim 380.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5425 to the Claim and/or Preliminary Evaluation of Claim 380.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3671: 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 3671 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 3671. *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 380 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 4.697 cfs as originally claimed, to 4.568 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2073, the remaining contest to Claim 380. *See* UNITED STATES NOTICE OF WITHDRAWAL OF CONTESTS (Mar. 11, 2003).
26. On April 21, 2003 the USFS submitted a second amendment for Claim 380 to correct a scrivener's error in the attachment for Claim 380. The maximum acre-feet per year was incorrectly listed for Whitehouse Spring (USFS ID 1448) as "n/a" and is corrected to read 5.5 acre-feet.
27. On April 2, 2003, the Adjudicator withdrew Case 007 from the Office of Administrative Hearings.
28. The place of use underlying Claim 380 is within a federal reservation of land that is owned by the Claimant.
29. 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 two reservation dates as follows: (1) the reservation date of April 15, 1961 is based on the "Proclamation Taking Title to

² Don Vincent voluntarily withdrew from Contest 3671 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

Certain Lands. . .” April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961), and (2) 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.

30. The rate, maximum acre-feet per year allowed, and season of use claimed, as amended by the USFS on December 30, 2002, and March 11, 2003, 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 380 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. 380

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-404-0106 THROUGH 97-404-0112 (A4);
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.

PERIOD OF ALLOWED USE:

MARCH 1 THROUGH NOVEMBER 30; AND
APRIL 1 THROUGH NOVEMBER 1 ONLY FOR: Hog Creek - USFS ID 1016

RATE OF USE:

THE RATE OF USE IS AS FOLLOWS, NOT TO EXCEED A TOTAL OF 4.586 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:

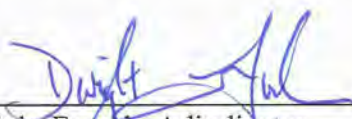
Source		Priority Date	Quantity of Water		Point of Diversion Location				
USFS-ID	Name		CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
All Tributary to the Williamson River									
1299	Boundary Butte Springs	Nov. 15, 1974	0.223	2.2	32 S	7 E	WM	17	NE SE
1298	Egan Spring	Nov. 15, 1974	0.223	2.2	32 S	7 E	WM	21	NW NE
1054	Unnamed Pond	April 15, 1961	0.557	5.5	32 S	8 E	WM	24	NE SE
1055	Dice Crane Spring	April 15, 1961	0.557	5.5	32 S	8 E	WM	24	NW SE
1016	Hog Creek	April 15, 1961	0.557	5.5	32 S	8 E	WM	27	SW NW
1059	Spring	April 15, 1961	0.557	5.5	32 S	9 E	WM	8	SE NW
1056	Recovery Spring	April 15, 1961	0.557	5.5	32 S	9 E	WM	17	NW SE
1448	Whitehouse Spring	April 15, 1961	0.557	5.5	32 S	9 E	WM	31	SE NE
1264	Williamson River	Nov. 15, 1974	0.557	5.5	33 S	7 E	WM	35	SW SE
1177	Applegate Reservoir	Nov. 15, 1974	0.223	2.2	33 S	9 E	WM	18	SW NE

THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1299	Boundary Butte Springs	32 S	7 E	WM	17	NE SE
1298	Egan Spring	32 S	7 E	WM	21	NW NE
1054	Unnamed Pond	32 S	8 E	WM	24	NE SE
1055	Dice Crane Spring	32 S	8 E	WM	24	NW SE
1016	Hog Creek	32 S	8 E	WM	27	SW NW
1059	Spring	32 S	9 E	WM	8	SE NW
1056	Recovery Spring	32 S	9 E	WM	17	NW SE
1448	Whitehouse Spring	32 S	9 E	WM	31	SE NE
1264	Williamson River	33 S	7 E	WM	35	SW SE
1177	Applegate Reservoir	33 S	9 E	WM	18	SW NE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication