

**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 382
)	

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 382) 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), under statute 73 P. L. 161, 48 Stat. 590, 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 and the portion of the claim under statute 73 P. L. 161, 48 Stat. 590 were approved; the portion of the claim under MUSYA was denied.
3. On May 5, 2000, the Claimant, USFS, timely filed Contest 2075 to the Preliminary Evaluation of Claim 382.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 54 to the Claim and/or Preliminary Evaluation of Claim 382.
5. On May 1, 2000, Leonard Baio timely filed Contest 288 to the Claim and/or Preliminary Evaluation of Claim 382.
6. On May 2, 2000, Gary Strong timely filed Contest 523 to the Claim and/or Preliminary Evaluation of Claim 382.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 756 to the Claim and/or Preliminary Evaluation of Claim 382.
8. On May 2, 2000, Robert Bartell timely filed Contest 993 to the Claim and/or Preliminary Evaluation of Claim 382.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1228 to the Claim and/or Preliminary Evaluation of Claim 382.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1462 to the Claim and/or Preliminary Evaluation of Claim 382.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1811 to the Claim and/or Preliminary Evaluation of Claim 382.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2263 to the Claim and/or Preliminary Evaluation of Claim 382.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2499 to the Claim and/or Preliminary Evaluation of Claim 382.
14. On May 8, 2000, John Briggs timely filed Contest 4251 to the Claim and/or Preliminary Evaluation of Claim 382.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4485 to the Claim and/or Preliminary Evaluation of Claim 382.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4718 to the Claim and/or Preliminary Evaluation of Claim 382.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4959 to the Claim and/or Preliminary Evaluation of Claim 382.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5194 to the Claim and/or Preliminary Evaluation of Claim 382.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5427 to the Claim and/or Preliminary Evaluation of Claim 382.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3673: 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 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 3673. *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 382 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 7.031 cfs as originally claimed, to 5.643 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2075, the remaining contest to Claim 382. *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 382 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 three reservation dates as follows: (1) the reservation date of August 21, 1906 is based on the Presidential Proclamation of August 21, 1906, (2) the reservation date of September 17, 1906 is based on the Presidential Proclamation of September 17, 1906, and (3) the reservation date of October

¹ Berlva Pritchard voluntarily withdrew from Contest 3673 on June 24, 2002. *See NOTICE OF WITHDRAWAL OF CLAIMANT.*

² Don Vincent voluntarily withdrew from Contest 3673 on November 29, 2000. *See NOTICE OF WITHDRAWAL OF CLAIMANTS.*

14, 1935 is based on Presidential Proclamation No. 2143, October 14, 1935. 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 and statute 73 P. L. 161, 48 Stat. 590 for a federal reserved water right are valid bases for this claim, including the claimed purposes of use. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897. The October 14, 1935 reservation is based on Presidential Proclamation No. 2143, October 14, 1935. The authority for this presidential proclamation derives from 73 P.L. 161, 48 Stat. 590 (Act of April 14, 1934), which provides that the President is:

authorized to revise the boundaries of the Fremont National Forest in the State of Oregon so as to include within that national forest, subject to valid existing claims, such lands within the State of Oregon as he considers desirable for the production of timber, the protection of stream flow, and/or the regulation and improvement of the grazing resources....

The claimed purposes of use are consistent both with the primary purposes of use identified in 73 P. L. 161, 48 Stat. 590 and with the Organic Administration Act of 1897.

2. Based on the file and record herein, IT IS ORDERED that Claim 382 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. 382

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-406-0060 THROUGH 97-406-0067 (A6);
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; FIRE SUPPRESSION; AND

LIVESTOCK WATERING ONLY FOR: Sycan River (USFS ID 31.1); AND

ADMINISTRATIVE USE ONLY FOR: Skull Creek Workcamp (USFS-ID 247.3).

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 5.643 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		Place of Use Location				
All Tributary to the Sycan River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
31.1	Sycan River	Sept 14, 1935	0.014	n/a	32 S	14 E	WM	22	NW SW
36	Louse Lake	Sept. 17, 1906	0.223	2.2	32 S	14 E	WM	26	SW SW
83	T-Spring	Sept. 17, 1906	0.223	2.2	32 S	15 E	WM	31	SE NE
217	Long Creek	Sept. 17, 1906	0.223	2.2	32 S	16 E	WM	31	SE SE
104	Unnamed Drainage	Sept. 17, 1906	0.223	2.2	32 S	16 E	WM	33	NW NW
197	Pikes Crossing	Sept. 17, 1906	0.223	2.2	33 S	15 E	WM	22	NE NW
199	Paradise Creek	Sept. 17, 1906	0.223	2.2	33 S	15 E	WM	22	NE SE
200	Skull Creek	Sept. 17, 1906	0.223	2.2	33 S	15 E	WM	24	NE SE
201	Paradise Creek	Sept. 17, 1906	0.223	2.2	33 S	15 E	WM	25	SW NW
202	Crazy Creek	Sept. 17, 1906	0.223	2.2	33 S	15 E	WM	26	SE NW
204	Crazy Creek	Sept. 17, 1906	0.223	2.2	33 S	15 E	WM	34	NE NE
222	Currier Spring	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	3	SW SW
228	Long Creek	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	6	SW SE
830	Rock Pit	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	14	NW SW
189	Currier Creek	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	18	NW NW
237	Rock Creek	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	21	NE SW
240	Unnamed Pond	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	22	SW NE
244	Sycan River	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	27	SW SW
245	Sycan River	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	28	SW NE
247	Skull Creek Workcamp	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	30	NE SW
247.3	Skull Creek Workcamp	Sept. 17, 1906	0.5	n/a	33 S	16 E	WM	30	NE SW
251	Sycan River	Sept. 17, 1906	0.223	2.2	33 S	16 E	WM	35	NE SW
242	Boulder Spring	Sept. 17, 1906	0.223	2.2	33 S	17 E	WM	30	LOT 3 (NW SW)
211	Crazy Creek	Aug. 21, 1906	0.223	2.2	34 S	15 E	WM	10	SE NW
215	Watson Creek	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	7	NE SW

THE PLACE OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
31.1	Sycan River	32 S	14 E	WM	22	NW SW
36	Louse Lake	32 S	14 E	WM	26	SW SW
83	T-Spring	32 S	15 E	WM	31	SE NE
217	Long Creek	32 S	16 E	WM	31	SE SE
104	Unnamed Drainage	32 S	16 E	WM	33	NW NW
197	Pikes Crossing	33 S	15 E	WM	22	NE NW
199	Paradise Creek	33 S	15 E	WM	22	NE SE
200	Skull Creek	33 S	15 E	WM	24	NE SE
201	Paradise Creek	33 S	15 E	WM	25	SW NW
202	Crazy Creek	33 S	15 E	WM	26	SE NW
204	Crazy Creek	33 S	15 E	WM	34	NE NE
222	Currier Spring	33 S	16 E	WM	3	SW SW
228	Long Creek	33 S	16 E	WM	6	SW SE
830	Rock Pit	33 S	16 E	WM	14	NW SW
189	Currier Creek	33 S	16 E	WM	18	NW NW
237	Rock Creek	33 S	16 E	WM	21	NE SW
240	Unnamed Pond	33 S	16 E	WM	22	SW NE
244	Sycan River	33 S	16 E	WM	27	SW SW
245	Sycan River	33 S	16 E	WM	28	SW NE
247	Skull Creek Workcamp	33 S	16 E	WM	30	NE SW
247.3	Skull Creek Workcamp	33 S	16 E	WM	30	NE SW
251	Sycan River	33 S	16 E	WM	35	NE SW
242	Boulder Spring	33 S	17 E	WM	30	LOT 3 (NW SW)
211	Crazy Creek	34 S	15 E	WM	10	SE NW
215	Watson Creek	34 S	16 E	WM	7	NE SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication