

**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 383

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 383) 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 2076 to the Preliminary Evaluation of Claim 383.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 55 to the Claim and/or Preliminary Evaluation of Claim 383.
5. On May 1, 2000, Leonard Baio timely filed Contest 289 to the Claim and/or Preliminary Evaluation of Claim 383.

6. On May 2, 2000, Gary Strong timely filed Contest 524 to the Claim and/or Preliminary Evaluation of Claim 383.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 757 to the Claim and/or Preliminary Evaluation of Claim 383.
8. On May 2, 2000, Robert Bartell timely filed Contest 994 to the Claim and/or Preliminary Evaluation of Claim 383.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1229 to the Claim and/or Preliminary Evaluation of Claim 383.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1463 to the Claim and/or Preliminary Evaluation of Claim 383.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1812 to the Claim and/or Preliminary Evaluation of Claim 383.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2264 to the Claim and/or Preliminary Evaluation of Claim 383.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2500 to the Claim and/or Preliminary Evaluation of Claim 383.
14. On May 8, 2000, John Briggs timely filed Contest 4252 to the Claim and/or Preliminary Evaluation of Claim 383.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4486 to the Claim and/or Preliminary Evaluation of Claim 383.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4719 to the Claim and/or Preliminary Evaluation of Claim 383.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4960 to the Claim and/or Preliminary Evaluation of Claim 383.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5195 to the Claim and/or Preliminary Evaluation of Claim 383.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5428 to the Claim and/or Preliminary Evaluation of Claim 383.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3674: 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 3674. *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 383 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 5.462 cfs as originally claimed, to 1.774 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2076, the remaining contest to Claim 383. *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 383 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 September 17, 1906 is based on the Presidential Proclamation of September 17, 1906, (2) the reservation date of October 14, 1935 is based on Presidential Proclamation No. 2143, October 14, 1935, and (3) the reservation date of

¹ Berlva Pritchard voluntarily withdrew from Contest 3674 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3674 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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.

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 the 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 are incorporated as if set forth fully herein. 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 383 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. 383

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-407-0111 THROUGH 97-407-0119 (A7);
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:

LIVESTOCK WATERING; AND

THE USES OF ROAD CONSTRUCTION, MAINTENANCE AND DUST SUPPRESSION OF ROADS NECESSARY FOR TIMBER PRODUCTION, TIMBER HARVESTING, AND PROTECTION FROM FIRE, ONLY FOR:

- Unnamed Pond - USFS ID 21
- Tool Box Spring - USFS ID 53
- Kipple Lake - USFS ID 172
- Sycan Wooden Bridge - USFS ID 1222; AND

FIRE SUPPRESSION ONLY FOR:

- Unnamed Pond - USFS ID 21
- Tool Box Spring - USFS ID 53
- Kipple Lake - USFS ID 172
- Sycan Wooden Bridge - USFS ID 1222.

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 1.774 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 Sycan River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
21	Unnamed Pond	Oct. 14, 1935	0.557	5.5	31 S	14 E	WM	19	SW NW
24.1	Unnamed Pond	Oct. 14, 1935	0.108	n/a	31 S	14 E	WM	35	NE SE
45.1	Unnamed Pond	Oct. 14, 1935	0.108	n/a	31 S	15 E	WM	35	NE SE
28.1	Unnamed Pond	Oct. 14, 1935	0.108	n/a	32 S	14 E	WM	11	SW SW
29.1	Sycan Stockyard 1	Oct. 14, 1935	0.014	n/a	32 S	14 E	WM	14	SE NW
30.1	Sycan Stockyard 2	Oct. 14, 1935	0.014	n/a	32 S	14 E	WM	14	SE NW
639.1	Sycan Stockpond 88	Oct. 14, 1935	0.014	n/a	32 S	14 E	WM	14	SE NE
640.1	Sycan Stockpond 87	Oct. 14, 1935	0.014	n/a	32 S	14 E	WM	15	SE NE
37.1	Riverbed Stockpond 27	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	27	SW NW
38.1	Riverbed Stockpond 28	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	28	SE NW
644.1	Sycan Stockpond 86	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	29	SW SW
39.1	Riverbed Stockpond 21	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	31	NE SW
645.1	Sycan Stockpond 85	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	33	NE SE
646.1	Sycan Stockpond 84	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	33	SW SE
145.1	Riverbed Stockpond 11	Oct. 14, 1935	0.007	n/a	32 S	14 E	WM	34	SW SW

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to the Sycan River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
53	Tool Box Spring	Sept. 17, 1906	0.223	2.2	32 S	15 E	WM	2	SE NW
59.1	Unnamed Reservoir	Oct. 14, 1935	0.014	n/a	32 S	15 E	WM	9	NE SE
822.1	Unnamed Stockpond	Oct. 14, 1935	0.014	n/a	32 S	15 E	WM	9	NW SE
647.1	Sycan Stockpond 92	Oct. 14, 1935	0.014	n/a	32 S	15 E	WM	10	NW SW
818.1	Unnamed Stockpond	Oct. 14, 1935	0.014	n/a	32 S	16 E	WM	7	SE SE
148.1	Riverbed Stockpond 9	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	3	SE SW
147.1	Riverbed Stockpond 10	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	3	SW NW
149.1	Riverbed Stockpond 12	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	4	LOT 3 (NW NE)
636.1	Unnamed Stream	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	4	NW SW
150.1	Shade Creek Pond	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	4	SW NW
151.1	Riverbed Stockpond 13	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	5	NE SE
153.1	Riverbed Stockpond 20	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	6	LOT 4 (SW NW)
154.1	Riverbed Stockpond 18	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	6	NW SE
152.1	Riverbed Stockpond 19	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	6	SW NE
172	Kipple Lake	Sept. 17, 1906	0.223	n/a	33 S	14 E	WM	26	NE NE
1222	Sycan Wooden Bridge	April 15, 1961	0.223	2.2	33 S	13 E	WM	10	NE SW

THE PLACE OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
21	Unnamed Pond	31 S	14 E	WM	19	SW NW
24.1	Unnamed Pond	31 S	14 E	WM	35	NE SE
45.1	Unnamed Pond	31 S	15 E	WM	35	NE SE
28.1	Unnamed Pond	32 S	14 E	WM	11	SW SW
29.1	Sycan Stockyard 1	32 S	14 E	WM	14	SE NW
30.1	Sycan Stockyard 2	32 S	14 E	WM	14	SE NW
639.1	Sycan Stockpond 88	32 S	14 E	WM	14	SE NE
640.1	Sycan Stockpond 87	32 S	14 E	WM	15	SE NE
37.1	Riverbed Stockpond 27	32 S	14 E	WM	27	SW NW
38.1	Riverbed Stockpond 28	32 S	14 E	WM	28	SE NW
644.1	Sycan Stockpond 86	32 S	14 E	WM	29	SW SW
39.1	Riverbed Stockpond 21	32 S	14 E	WM	31	NE SW
645.1	Sycan Stockpond 85	32 S	14 E	WM	33	NE SE
646.1	Sycan Stockpond 84	32 S	14 E	WM	33	SW SE

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
145.1	Riverbed Stockpond 11	32 S	14 E	WM	34	SW SW
53	Tool Box Spring	32 S	15 E	WM	2	SE NW
59.1	Unnamed Reservoir	32 S	15 E	WM	9	NE SE
822.1	Unnamed Stockpond	32 S	15 E	WM	9	NW SE
647.1	Sycan Stockpond 92	32 S	15 E	WM	10	NW SW
818.1	Unnamed Stockpond	32 S	16 E	WM	7	SE SE
148.1	Riverbed Stockpond 9	33 S	14 E	WM	3	SE SW
147.1	Riverbed Stockpond 10	33 S	14 E	WM	3	SW NW
149.1	Riverbed Stockpond 12	33 S	14 E	WM	4	LOT 3 (NW NE)
636.1	Unnamed Stream	33 S	14 E	WM	4	NW SW
150.1	Shade Creek Pond	33 S	14 E	WM	4	SW NW
151.1	Riverbed Stockpond 13	33 S	14 E	WM	5	NE SE
153.1	Riverbed Stockpond 20	33 S	14 E	WM	6	LOT 4 (SW NW)
154.1	Riverbed Stockpond 18	33 S	14 E	WM	6	NW SE
152.1	Riverbed Stockpond 19	33 S	14 E	WM	6	SW NE
172	Kipple Lake	33 S	14 E	WM	26	NE NE
1222	Sycan Wooden Bridge	33 S	13 E	WM	10	NE SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication