

**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 384

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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 384) 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, 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 2077 to the Preliminary Evaluation of Claim 384.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 56 to the Claim and/or Preliminary Evaluation of Claim 384.
5. On May 1, 2000, Leonard Baio timely filed Contest 290 to the Claim and/or Preliminary Evaluation of Claim 384.
6. On May 2, 2000, Gary Strong timely filed Contest 525 to the Claim and/or Preliminary Evaluation of Claim 384.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 758 to the Claim and/or Preliminary Evaluation of Claim 384.

8. On May 2, 2000, Robert Bartell timely filed Contest 995 to the Claim and/or Preliminary Evaluation of Claim 384.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1230 to the Claim and/or Preliminary Evaluation of Claim 384.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1464 to the Claim and/or Preliminary Evaluation of Claim 384.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1813 to the Claim and/or Preliminary Evaluation of Claim 384.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2265 to the Claim and/or Preliminary Evaluation of Claim 384.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2501 to the Claim and/or Preliminary Evaluation of Claim 384.
14. On May 8, 2000, John Briggs timely filed Contest 4253 to the Claim and/or Preliminary Evaluation of Claim 384.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4487 to the Claim and/or Preliminary Evaluation of Claim 384.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4720 to the Claim and/or Preliminary Evaluation of Claim 384.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4961 to the Claim and/or Preliminary Evaluation of Claim 384.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5196 to the Claim and/or Preliminary Evaluation of Claim 384.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5429 to the Claim and/or Preliminary Evaluation of Claim 384.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3675: 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

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<sup>1</sup> Berlva Pritchard voluntarily withdrew from Contest 3675 on June 24, 2002. See NOTICE OF WITHDRAWAL OF CLAIMANT.

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 3675. *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 384 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 7.641 cfs as originally claimed, to 5.588 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2077, the remaining contest to Claim 384. *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 384 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 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.

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<sup>2</sup> Don Vincent voluntarily withdrew from Contest 3675 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 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 384 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. 384**

#### **CLAIM MAP REFERENCE:**

USFS MAPS FILED 1997, 97-408-0095 THROUGH 97-408-0102 (A8);  
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

LIVESTOCK USE ONLY FOR:

Riverbed Stockpond 16 - USFS ID 165.1  
Riverbed Stockpond 17 - USFS ID 166.1.

**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 5.588 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								
108	Sycan Pond	April 15, 1961	0.223	2.2	33 S	12 E	WM	34	SW NW
127	Sycan River 1	April 15, 1961	0.223	2.2	33 S	13 E	WM	16	SE NW
131	Merritt Creek	April 15, 1961	0.223	2.2	33 S	13 E	WM	26	SW SW
133	Merritt Creek	April 15, 1961	0.223	2.2	33 S	13 E	WM	34	NE NE
166.1	Riverbed Stockpond 17	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	18	LOT 2 (SW NW)
165.1	Riverbed Stockpond 16	Oct. 14, 1935	0.007	n/a	33 S	14 E	WM	18	SE SW
177	Dicks Well Spring	Sept. 17, 1906	0.223	2.2	33 S	14 E	WM	32	NE NW
114	INT Spring	April 15, 1961	0.223	2.2	34 S	12 E	WM	2	NW SE
117	Godowa Rock Pit	April 15, 1961	0.223	2.2	34 S	12 E	WM	4	NE SW
261	Sycan River	April 15, 1961	0.557	5.5	34 S	12 E	WM	19	NW NW
279	Pelland Spring Pond	April 15, 1961	0.223	2.2	34 S	12 E	WM	24	NE NW
268	Blue Creek	April 15, 1961	0.223	2.2	34 S	12 E	WM	28	SE NW
135	Watkins Spring	April 15, 1961	0.223	2.2	34 S	13 E	WM	2	NE NE
142	Thicket Spring	April 15, 1961	0.223	2.2	34 S	13 E	WM	9	SW SE
280	Electric Pond	April 15, 1961	0.223	2.2	34 S	13 E	WM	15	SW NE
281	Diamond Pond	April 15, 1961	0.223	2.2	34 S	13 E	WM	17	NE SW
144	Stream	April 15, 1961	0.223	2.2	34 S	13 E	WM	18	NE NW
300	Mill Creek 1	April 15, 1961	0.223	2.2	35 S	13 E	WM	8	LOT 4 (SE NE)
301	Mill Creek 2	April 15, 1961	0.223	2.2	35 S	13 E	WM	9	LOT 6 (NW SW)
306	Mill Creek Pond	April 15, 1961	0.223	2.2	35 S	13 E	WM	20	SW NE
1250	Sycan Ford	April 15, 1961	0.223	2.2	33 S	12 E	WM	34	SW NW
1590	Unnamed Pothole	April 15, 1961	0.223	2.2	33 S	13 E	WM	5	LOT 2 (NW NE)
1213	Little Hole Big Meadow	April 15, 1961	0.557	5.5	33 S	13 E	WM	7	NE NE
1212	Loggers Pond	April 15, 1961	0.223	2.2	34 S	11 E	WM	24	NW NE

THE PLACE OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
108	Sycan Pond	33 S	12 E	WM	34	SW NW
127	Sycan River 1	33 S	13 E	WM	16	SE NW
131	Merritt Creek	33 S	13 E	WM	26	SW SW
133	Merritt Creek	33 S	13 E	WM	34	NE NE
166.1	Riverbed Stockpond 17	33 S	14 E	WM	18	LOT 2 (SW NW)
165.1	Riverbed Stockpond 16	33 S	14 E	WM	18	SE SW
177	Dicks Well Spring	33 S	14 E	WM	32	NE NW
114	INT Spring	34 S	12 E	WM	2	NW SE
117	Godowa Rock Pit	34 S	12 E	WM	4	NE SW
261	Sycan River	34 S	12 E	WM	19	NW NW
279	Pelland Spring Pond	34 S	12 E	WM	24	NE NW
268	Blue Creek	34 S	12 E	WM	28	SE NW
135	Watkins Spring	34 S	13 E	WM	2	NE NE
142	Thicket Spring	34 S	13 E	WM	9	SW SE
280	Electric Pond	34 S	13 E	WM	15	SW NE
281	Diamond Pond	34 S	13 E	WM	17	NE SW
144	Stream	34 S	13 E	WM	18	NE NW
300	Mill Creek 1	35 S	13 E	WM	8	LOT 4 (SENE)
301	Mill Creek 2	35 S	13 E	WM	9	LOT 6 (NWSW)
306	Mill Creek Pond	35 S	13 E	WM	20	SW NE
1250	Sycan Ford	33 S	12 E	WM	34	SW NW
1590	Unnamed Pothole	33 S	13 E	WM	5	LOT 2 (NW NE)
1213	Little Hole Big Meadow	33 S	13 E	WM	7	NE NE
1212	Loggers Pond	34 S	11 E	WM	24	NW NE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication