

**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 385

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 385) 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 2078 to the Preliminary Evaluation of Claim 385.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 57 to the Claim and/or Preliminary Evaluation of Claim 385.
5. On May 1, 2000, Leonard Baio timely filed Contest 291 to the Claim and/or Preliminary Evaluation of Claim 385.
6. On May 2, 2000, Gary Strong timely filed Contest 526 to the Claim and/or Preliminary Evaluation of Claim 385.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 759 to the Claim and/or Preliminary Evaluation of Claim 385.
8. On May 2, 2000, Robert Bartell timely filed Contest 996 to the Claim and/or Preliminary Evaluation of Claim 385.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1231 to the Claim and/or Preliminary Evaluation of Claim 385.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1465 to the Claim and/or Preliminary Evaluation of Claim 385.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1814 to the Claim and/or Preliminary Evaluation of Claim 385.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2266 to the Claim and/or Preliminary Evaluation of Claim 385.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2502 to the Claim and/or Preliminary Evaluation of Claim 385.
14. On May 8, 2000, John Briggs timely filed Contest 4254 to the Claim and/or Preliminary Evaluation of Claim 385.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4488 to the Claim and/or Preliminary Evaluation of Claim 385.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4721 to the Claim and/or Preliminary Evaluation of Claim 385.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4962 to the Claim and/or Preliminary Evaluation of Claim 385.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5197 to the Claim and/or Preliminary Evaluation of Claim 385.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5430 to the Claim and/or Preliminary Evaluation of Claim 385.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3676: 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 3676. *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 385 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 5.777 cfs as originally claimed, to 5.363 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2078, the remaining contest to Claim 385. *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 385 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 a Presidential Proclamation of August 21, 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

¹ Berlva Pritchard voluntarily withdrew from Contest 3676 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3676 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 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 385 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. 385

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-409-0125 THROUGH 97-409-0128 (A9);
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

LIVESTOCK WATERING ONLY FOR:

Unnamed Pond - USFS-ID 319.1

Rib Spring - USFS-ID 395.1

Bauer Spring - USFS-ID 344.1

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 5.363 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 North Fork Sprague River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
284	Buck Spring	April 15, 1961	0.223	2.2	34 S	13 E	WM	26	NE NW
283	Frying Pan Spring	April 15, 1961	0.223	2.2	34 S	13 E	WM	26	NW SE
282	Buck Spring Reservoir	April 15, 1961	0.223	2.2	34 S	13 E	WM	26	SE SE
287	Dice Springs	April 15, 1961	0.223	2.2	34 S	13 E	WM	29	NE SE
293	No Name Creek	April 15, 1961	0.223	2.2	34 S	13 E	WM	36	SW NW
313	Quarry 1 North	Aug. 21, 1906	0.223	2.2	34 S	14 E	WM	17	NE SE
314	Quarry 2 South	Aug. 21, 1906	0.223	2.2	34 S	14 E	WM	17	NE SE
312	Horseglade Spring	Aug. 21, 1906	0.223	2.2	34 S	14 E	WM	17	NW SE
316	Fivemile Creek	Aug. 21, 1906	0.223	2.2	34 S	14 E	WM	20	SW NW
831	Cold Creek Crossing	Aug. 21, 1906	0.223	2.2	34 S	15 E	WM	35	NW NW
259	School Creek	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	10	NW NW
350	North Fork Sprague River	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	19	NE SW
349	North Fork Sprague River	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	20	NE SE
348	North Fork Sprague River	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	20	NW SE
354	Gold Creek	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	23	SW SW
356	North Fork Sprague River	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	28	SE NW
324	Sandhill Crossing	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	30	SW NW
325	North Fork Sprague River	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	30	SW NW
358	Pit Pond	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	33	SW SW
360	Unnamed Spring	Aug. 21, 1906	0.223	2.2	34 S	16 E	WM	35	NW NW
295	Huckleberry 1	April 15, 1961	0.223	2.2	35 S	13 E	WM	3	LOT 4 (NW NW)
319.1	Unnamed Pond	Oct. 14, 1935	0.002	n/a	35 S	14 E	WM	19	SE NE

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to the North Fork Sprague River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
395.1	Rib Spring	Oct. 14, 1935	0.002	n/a	35 S	14 E	WM	34	SE NE
837	North Fork Sprague River	Oct. 14, 1935	0.223	2.2	35 S	14 E	WM	34	SE SE
344.1	Bauer Spring	Oct. 14, 1935	0.007	n/a	35 S	15 E	WM	30	LOT 4 (SW SW)
361	Dead Horse Lake	Aug. 21, 1906	0.223	2.2	35 S	16 E	WM	1	LOT 6 (SE SW)
362	North Fork Sprague River	Aug. 21, 1906	0.223	2.2	35 S	16 E	WM	4	LOT 4 (NW NW)


THE PLACE OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
284	Buck Spring	34 S	13 E	WM	26	NE NW
283	Frying Pan Spring	34 S	13 E	WM	26	NW SE
282	Buck Spring Reservoir	34 S	13 E	WM	26	SE SE
287	Dice Springs	34 S	13 E	WM	29	NE SE
293	No Name Creek	34 S	13 E	WM	36	SW NW
313	Quarry 1 North	34 S	14 E	WM	17	NE SE
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348	North Fork Sprague River	34 S	16 E	WM	20	NW SE
354	Gold Creek	34 S	16 E	WM	23	SW SW
356	North Fork Sprague River	34 S	16 E	WM	28	SE NW
324	Sandhill Crossing	34 S	16 E	WM	30	SW NW
325	North Fork Sprague River	34 S	16 E	WM	30	SW NW
358	Pit Pond	34 S	16 E	WM	33	SW SW
360	Unnamed Spring	34 S	16 E	WM	35	NW NW
295	Huckleberry 1	35 S	13 E	WM	3	LOT 4 (NW NW)
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USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
344.1	Bauer Spring	35 S	15 E	WM	30	LOT 4 (SW SW)
361	Dead Horse Lake	35 S	16 E	WM	1	LOT 6 (SE SW)
362	North Fork Sprague River	35 S	16 E	WM	4	LOT 4 (NW NW)

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication