

**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 386

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 386) 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 2079 to the Preliminary Evaluation of Claim 386.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 58 to the Claim and/or Preliminary Evaluation of Claim 386.
5. On May 1, 2000, Leonard Baio timely filed Contest 292 to the Claim and/or Preliminary Evaluation of Claim 386.
6. On May 2, 2000, Gary Strong timely filed Contest 527 to the Claim and/or Preliminary Evaluation of Claim 386.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 760 to the Claim and/or Preliminary Evaluation of Claim 386.
8. On May 2, 2000, Robert Bartell timely filed Contest 997 to the Claim and/or Preliminary Evaluation of Claim 386.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1232 to the Claim and/or Preliminary Evaluation of Claim 386.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1466 to the Claim and/or Preliminary Evaluation of Claim 386.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1815 to the Claim and/or Preliminary Evaluation of Claim 386.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2267 to the Claim and/or Preliminary Evaluation of Claim 386.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2503 to the Claim and/or Preliminary Evaluation of Claim 386.
14. On May 8, 2000, John Briggs timely filed Contest 4255 to the Claim and/or Preliminary Evaluation of Claim 386.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4489 to the Claim and/or Preliminary Evaluation of Claim 386.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4722 to the Claim and/or Preliminary Evaluation of Claim 386.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4963 to the Claim and/or Preliminary Evaluation of Claim 386.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5198 to the Claim and/or Preliminary Evaluation of Claim 386.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5431 to the Claim and/or Preliminary Evaluation of Claim 386.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3677: 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 3677. *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 386 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 6.501 cfs as originally claimed, to 5.963 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2079, the remaining contest to Claim 386. *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 386 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 two reservation dates as follows: (1) the reservation date of August 21, 1906 is based on a Presidential Proclamation of August 21, 1906, and (2) the reservation date of October 14, 1935 is based on

¹ Berlva Pritchard voluntarily withdrew from Contest 3677 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3677 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 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 386 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. 386

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-410-0054 THROUGH 97-410-0060 (A10);
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:
 Butte 2 Spring - USFS ID 417.1
 Owens Pond - USFS ID 413.1
 Swede Pond - USFS ID 414.1
 Flat Pond - USFS ID 415.1
 Sagehen Pond - USFS ID 523.1
 Line Pond - USFS ID 525.1); AND

ADMINISTRATIVE USE ONLY FOR:
 Lantern Flat Spring - USFS-ID 451.3.

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 5.963 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 and Place of Use Location				
All Tributary to the South Fork Sprague River	USFS-ID		CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
Name									
417.1	Butte 2 Spring	Oct. 14, 1935	0.14	n/a	36 S	15 E	WM	12	NW NW
407	Don Spring	Aug. 21, 1906	0.223	2.2	36 S	15 E	WM	12	SW NE
625	Whiskey Spring	Aug. 21, 1906	0.223	2.2	36 S	15 E	WM	13	NW SE
409	Gin Spring	Aug. 21, 1906	0.223	2.2	36 S	15 E	WM	13	SW NW
413.1	Owens Pond	Oct. 14, 1935	0.014	n/a	36 S	15 E	WM	34	NE SW
414.1	Swede Pond	Oct. 14, 1935	0.014	n/a	36 S	15 E	WM	35	SE NE
838	Brownsworth Creek	Oct. 14, 1935	0.223	2.2	36 S	15 E	WM	36	NE SW
415.1	Flat Pond	Oct. 14, 1935	0.014	n/a	36 S	15 E	WM	36	NWSW
431	Corral Creek	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	12	SW SW
432	South Fork Sprague River	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	13	NW NW
434	Camp Creek	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	14	NE SW
433	South Fork Sprague River	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	14	SE NE
440	Brownsworth Creek	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	28	NW NW
408	Stock Spring	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	7	SW SW
423	Leonard Creek	Aug. 21, 1906	0.223	2.2	36 S	16 E	WM	8	SW SW
446	Blanche Spring	Aug. 21, 1906	0.223	2.2	36 S	17 E	WM	29	SW NW
447	Blonde Spring	Aug. 21, 1906	0.223	2.2	36 S	17 E	WM	30	NE SE
448	Round Spring	Aug. 21, 1906	0.223	2.2	36 S	17 E	WM	30	SE SE
449	Buckboard Creek	Aug. 21, 1906	0.557	5.5	36 S	17 E	WM	31	NE NE

Source		Priority Date	Quantity of Water		Point of Diversion Location and Place of Use Location				
All Tributary to the South Fork Sprague River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
451.3	Lantern Flat Spring	Aug. 21, 1906	0.1	n/a	36 S	17 E	WM	32	NE SE
451	Lantern Flat Spring	Aug. 21, 1906	0.223	2.2	36 S	17 E	WM	32	NE SE
450	Road Spring	Aug. 21, 1906	0.223	2.2	36 S	17 E	WM	32	NW NW
452	Lantern Flat Pond	Aug. 21, 1906	0.557	5.5	36 S	17 E	WM	32	SW SE
523.1	Sagehen Pond	Oct. 14, 1935	0.005	n/a	37 S	15 E	WM	20	SE SE
525.1	Line Pond	Oct. 14, 1935	0.005	n/a	37 S	15 E	WM	28	NW NW
445	Pothole Pond	Aug. 21, 1906	0.223	2.2	37 S	16 E	WM	12	NW SW
844	Indigo Creek	Aug. 21, 1906	0.223	2.2	37 S	16 E	WM	32	SE NW
442	Bare Flat Pond	Aug. 21, 1906	0.223	2.2	37 S	17 E	WM	6	SW NE
593	Whit Spring	Aug. 21, 1906	0.223	2.2	37 S	17 E	WM	23	NW SW
532	Mix Up Spring	Aug. 21, 1906	0.223	2.2	38 S	16 E	WM	6	NW NE


THE PLACE OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
417.1	Butte 2 Spring	36 S	15 E	WM	12	NW NW
407	Don Spring	36 S	15 E	WM	12	SW NE
625	Whiskey Spring	36 S	15 E	WM	13	NW SE
409	Gin Spring	36 S	15 E	WM	13	SW NW
413.1	Owens Pond	36 S	15 E	WM	34	NE SW
414.1	Swede Pond	36 S	15 E	WM	35	SE NE
838	Brownsworth Creek	36 S	15 E	WM	36	NE SW
415.1	Flat Pond	36 S	15 E	WM	36	NWSW
431	Corral Creek	36 S	16 E	WM	12	SW SW
432	South Fork Sprague River	36 S	16 E	WM	13	NW NW
434	Camp Creek	36 S	16 E	WM	14	NE SW
433	South Fork Sprague River	36 S	16 E	WM	14	SE NE
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408	Stock Spring	36 S	16 E	WM	7	SW SW
423	Leonard Creek	36 S	16 E	WM	8	SW SW
446	Blanche Spring	36 S	17 E	WM	29	SW NW
447	Blonde Spring	36 S	17 E	WM	30	NE SE
448	Round Spring	36 S	17 E	WM	30	SE SE
449	Buckboard Creek	36 S	17 E	WM	31	NE NE
451.3	Lantern Flat Spring	36 S	17 E	WM	32	NE SE

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445	Pothole Pond	37 S	16 E	WM	12	NW SW
844	Indigo Creek	37 S	16 E	WM	32	SE NW
442	Bare Flat Pond	37 S	17 E	WM	6	SW NE
593	Whit Spring	37 S	17 E	WM	23	NW SW
532	Mix Up Spring	38 S	16 E	WM	6	NW NE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication