

**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 387

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 387) 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 2080 to the Preliminary Evaluation of Claim 387.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 59 to the Claim and/or Preliminary Evaluation of Claim 387.
5. On May 1, 2000, Leonard Baio timely filed Contest 293 to the Claim and/or Preliminary Evaluation of Claim 387.
6. On May 2, 2000, Gary Strong timely filed Contest 528 to the Claim and/or Preliminary Evaluation of Claim 387.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 761 to the Claim and/or Preliminary Evaluation of Claim 387.
8. On May 2, 2000, Robert Bartell timely filed Contest 998 to the Claim and/or Preliminary Evaluation of Claim 387.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1233 to the Claim and/or Preliminary Evaluation of Claim 387.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1467 to the Claim and/or Preliminary Evaluation of Claim 387.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1816 to the Claim and/or Preliminary Evaluation of Claim 387.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2268 to the Claim and/or Preliminary Evaluation of Claim 387.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2504 to the Claim and/or Preliminary Evaluation of Claim 387.
14. On May 8, 2000, John Briggs timely filed Contest 4256 to the Claim and/or Preliminary Evaluation of Claim 387.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4490 to the Claim and/or Preliminary Evaluation of Claim 387.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4723 to the Claim and/or Preliminary Evaluation of Claim 387.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4964 to the Claim and/or Preliminary Evaluation of Claim 387.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5199 to the Claim and/or Preliminary Evaluation of Claim 387.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5432 to the Claim and/or Preliminary Evaluation of Claim 387.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3678: 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 3678. *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 387 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 4.197 cfs as originally claimed, to 3.8 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2080, the remaining contest to Claim 387. *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 387 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 3678 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3678 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 387 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. 387

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-411-0096 THROUGH 97-411-0101 (A11);
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:

Glade Pond - USFS ID 500
Penny Hill Pond - USFS ID 501

Pine Spring Pond - USFS ID 512
 Borrow - USFS ID 840
 Fishhole Creek - USFS ID 539
 Unnamed Stream - USFS ID 543
 Lost Valley Reservoir - USFS ID 544
 Fishhole Creek GS - USFS ID 578
 Lost Burn Puddle - USFS ID 592
 Long Prairie Pond - USFS ID 610
 Lapham Reservoir - USFS ID 614; AND

FIRE SUPPRESSION USE ONLY FOR:

Glade Pond - USFS ID 500
 Penny Hill Pond - USFS ID 501
 Pine Spring Pond - USFS ID 512
 Borrow - USFS ID 840
 Fishhole Creek - USFS ID 539,
 Unnamed Stream - USFS ID 543
 Lost Valley Reservoir - USFS ID 544
 Fishhole Creek GS - USFS ID 578
 Lost Burn Puddle - USFS ID 592
 Long Prairie Pond - USFS ID 610
 Lapham Reservoir - USFS ID 614; AND

ADMINISTRATIVE USE ONLY FOR:

Fishhole Creek GS Spring - USFS-ID578.3.

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 3.8 CUBIC FEET PER SECOND (CFS):

THE SOURCES OF WATER, DATES OF PRIORITY, RATE OF USE (CFS), AND MAXIMUM ACRE-FEET PER YEAR ALLOWED (AF/Year), AND THE POINTS OF DIVERSION LOCATIONS ARE AS FOLLOWS:

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to Sprague Creek			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
480.1	Blue Kettle Pond 2	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	15	SE SW
478.1	Blue Kettle Pond 1	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	15	SW NW
481.1	Skeedaddle Pond	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	16	NE NW
482.1	Old Camp Spring Pond	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	16	SW SW
487.1	Boulder Creek Sump	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	21	NE SE
488.1	SGE Pond	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	22	NW NW
489.1	Unnamed Pond	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	25	SW SW

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to Sprague Creek			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
494.1	Pole Creek Sump	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	31	SE SE
825.1	Unnamed Stockpond	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	31	SW SE
498.1	L. Horsefly Pond	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	34	NE SE
497.1	Pole Creek Spring	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	34	NW NE
499.1	Cinder Spring	Oct. 14, 1935	0.031	n/a	37 S	14 E	WM	35	NW SW
522.1	Upper Taylor Pond	Oct. 14, 1935	0.005	n/a	37 S	15 E	WM	20	NE SW
526.1	Debbie Pond	Oct. 14, 1935	0.005	n/a	37 S	15 E	WM	30	SE NE
826.1	Unnamed Stockpond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	1	NE NW
500	Glade Pond	Oct. 14, 1935	0.223	2.2	38 S	14 E	WM	1	SW NW
501	Penny Hill Pond	Oct. 14, 1935	0.223	2.2	38 S	14 E	WM	2	LOT 2 (NWNE)
502.1	Haymaker Spring Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	2	SE SW
505.1	Sage Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	3	LOT 4 (SWNE)
504.1	Shepherdder Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	3	NE SW
503.1	Shepherdder Spring	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	3	SW NE
507.1	Pole Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	5	SW SE
509.1	Dry Lake Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	6	LOT 6 (NWSW)
510.1	Dry Lake Swamp	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	6	NE SW
511.1	Gerber Rim Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	7	NE SE
512	Pine Spring Pond	Aug. 21, 1906	0.223	2.2	38 S	14 E	WM	9	NE SE
514.1	Tag Spring	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	11	NE NE
513.1	Ham Spring	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	11	NE NW
515.1	Fly Pond	Oct. 14, 1935	0.031	n/a	38 S	14 E	WM	11	SW NE
535.1	Cinder Pond	Oct. 14, 1935	0.031	n/a	38 S	15 E	WM	4	NE NW
537.1	Devil Pond	Oct. 14, 1935	0.031	n/a	38 S	15 E	WM	9	NW NW
840	Borrow	Aug. 21, 1906	0.223	2.2	38 S	15 E	WM	10	NE NE
539	Fishhole Creek	Aug. 21, 1906	0.223	2.2	38 S	15 E	WM	10	SW SW
543	Unnamed Stream	Aug. 21, 1906	0.223	2.2	38 S	15 E	WM	12	NE SE
544	Lost Valley Reservoir	Aug. 21, 1906	0.223	2.2	38 S	15 E	WM	12	SE SE
550.1	Unnamed Pond	Oct. 14, 1935	0.031	n/a	38 S	15 E	WM	17	NW NW
578.3	Fishhole Creek GS	Aug. 21, 1906	0.5	n/a	38 S	16 E	WM	19	SW NE

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to Sprague Creek			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
578	Fishhole Creek GS	Aug. 21, 1906	0.223	2.2	38 S	16 E	WM	19	SW NE
592	Lost Burn Puddle	Aug. 21, 1906	0.223	2.2	38 S	16 E	WM	22	SW SW
610	Long Prairie Pond	Aug. 21, 1906	0.223	2.2	38 S	16 E	WM	34	LOT 6 (NWSW)
614	Lapham Reservoir	Aug. 21, 1906	0.223	2.2	39 S	16 E	WM	6	LOT 1 (NE NE)


THE PLACE OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
480.1	Blue Kettle Pond 2	37 S	14 E	WM	15	SE SW
478.1	Blue Kettle Pond 1	37 S	14 E	WM	15	SW NW
481.1	Skeedaddle Pond	37 S	14 E	WM	16	NE NW
482.1	Old Camp Spring Pond	37 S	14 E	WM	16	SW SW
487.1	Boulder Creek Sump	37 S	14 E	WM	21	NE SE
488.1	SGE Pond	37 S	14 E	WM	22	NW NW
489.1	Unnamed Pond	37 S	14 E	WM	25	SW SW
494.1	Pole Creek Sump	37 S	14 E	WM	31	SE SE
825.1	Unnamed Stockpond	37 S	14 E	WM	31	SW SE
498.1	L. Horsefly Pond	37 S	14 E	WM	34	NE SE
497.1	Pole Creek Spring	37 S	14 E	WM	34	NW NE
499.1	Cinder Spring	37 S	14 E	WM	35	NW SW
522.1	Upper Taylor Pond	37 S	15 E	WM	20	NE SW
526.1	Debbie Pond	37 S	15 E	WM	30	SE NE
826.1	Unnamed Stockpond	38 S	14 E	WM	1	NE NW
500	Glade Pond	38 S	14 E	WM	1	SW NW
501	Penny Hill Pond	38 S	14 E	WM	2	LOT 2 (NWNE)
502.1	Haymaker Spring Pond	38 S	14 E	WM	2	SE SW
505.1	Sage Pond	38 S	14 E	WM	3	LOT 4 (SWNE)
504.1	Shepherdder Pond	38 S	14 E	WM	3	NE SW
503.1	Shepherdder Spring	38 S	14 E	WM	3	SW NE
507.1	Pole Pond	38 S	14 E	WM	5	SW SE
509.1	Dry Lake Pond	38 S	14 E	WM	6	LOT 6 (NWSW)
510.1	Dry Lake Pond	38 S	14 E	WM	6	NE SW

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
511.1	Gerber Rim Pond	38 S	14 E	WM	7	NE SE
512	Pine Spring Pond	38 S	14 E	WM	9	NE SE
514.1	Tag Spring	38 S	14 E	WM	11	NE NE
513.1	Ham Spring	38 S	14 E	WM	11	NE NW
515.1	Fly Pond	38 S	14 E	WM	11	SW NE
535.1	Cinder Pond	38 S	15 E	WM	4	NE NW
537.1	Devil Pond	38 S	15 E	WM	9	NW NW
840	Borrow	38 S	15 E	WM	10	NE NE
539	Fishhole Creek	38 S	15 E	WM	10	SW SW
543	Unnamed Stream	38 S	15 E	WM	12	NE SE
544	Lost Valley Reservoir	38 S	15 E	WM	12	SE SE
550.1	Unnamed Pond	38 S	15 E	WM	17	NW NW
578.3	Fishhole Creek GS	38 S	16 E	WM	19	SW NE
578	Fishhole Creek GS	38 S	16 E	WM	19	SW NE
592	Lost Burn Puddle	38 S	16 E	WM	22	SW SW
610	Long Prairie Pond	38 S	16 E	WM	34	LOT 6 (NWSW)
614	Lapham Reservoir	39 S	16 E	WM	6	LOT 1 (NE NE)

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication