

**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 388

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 388) 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), 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 was approved and the portion of the claim under MUSYA was denied.
3. On May 5, 2000, the Claimant, USFS, timely filed Contest 2081 to the Preliminary Evaluation of Claim 388.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 60 to the Claim and/or Preliminary Evaluation of Claim 388.
5. On May 1, 2000, Leonard Baio timely filed Contest 294 to the Claim and/or Preliminary Evaluation of Claim 388.
6. On May 2, 2000, Gary Strong timely filed Contest 529 to the Claim and/or Preliminary Evaluation of Claim 388.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 762 to the Claim and/or Preliminary Evaluation of Claim 388.

8. On May 2, 2000, Robert Bartell timely filed Contest 999 to the Claim and/or Preliminary Evaluation of Claim 388.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1234 to the Claim and/or Preliminary Evaluation of Claim 388.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1468 to the Claim and/or Preliminary Evaluation of Claim 388.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1817 to the Claim and/or Preliminary Evaluation of Claim 388.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2269 to the Claim and/or Preliminary Evaluation of Claim 388.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2505 to the Claim and/or Preliminary Evaluation of Claim 388.
14. On May 8, 2000, John Briggs timely filed Contest 4257 to the Claim and/or Preliminary Evaluation of Claim 388.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4491 to the Claim and/or Preliminary Evaluation of Claim 388.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4724 to the Claim and/or Preliminary Evaluation of Claim 388.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4965 to the Claim and/or Preliminary Evaluation of Claim 388.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5200 to the Claim and/or Preliminary Evaluation of Claim 388.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5433 to the Claim and/or Preliminary Evaluation of Claim 388.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3679: Klamath Irrigation District, Klamath Drainage District, Tulalake 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

¹ Berlva Pritchard voluntarily withdrew from Contest 3649 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

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 3679. *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 388 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 2.472 cfs as originally claimed, to 2.23 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2081, the remaining contest to Claim 388. *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 388 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 April 15, 1961, and 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.

² Don Vincent voluntarily withdrew from Contest 3679 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.
PARTIAL ORDER OF DETERMINATION

B. DETERMINATION

1. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim, including the claimed purposes of use. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
2. Based on the file and record herein, IT IS ORDERED that Claim 388 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. 388

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-412-0086 THROUGH 97-412-0089 (A12);
 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.

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 2.23 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 Sprague River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
385	Brown Water	April 15, 1961	0.223	2.2	36 S	13 E	WM	32	NW SW
388	Whiskey John Pond	April 15, 1961	0.223	2.2	36 S	13 E	WM	35	NW SE
406	Deming Creek	Aug. 21, 1906	0.223	2.2	36 S	15 E	WM	10	SW SW
404	Boyd Spring	Aug. 21, 1906	0.223	2.2	36 S	15 E	WM	4	NE SW
405	Buzz Spring	Aug. 21, 1906	0.223	2.2	36 S	15 E	WM	5	SW NE


Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to the Sprague River			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
469	Yellow Jacket Spring Pond	April 15, 1961	0.223	2.2	37 S	12 E	WM	13	SW SE
476	Rock Pit	April 15, 1961	0.223	2.2	37 S	13 E	WM	18	SE NW
391	Chipmunk Spring	April 15, 1961	0.223	2.2	37 S	13 E	WM	6	SE SW
474	Mineral Creek	April 15, 1961	0.223	2.2	37 S	13 E	WM	8	SE SE
475	Mouse Spring	April 15, 1961	0.223	2.2	37 S	13 E	WM	9	SE SW

THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
385	Brown Water	36 S	13 E	WM	32	NW SW
388	Whiskey John Pond	36 S	13 E	WM	35	NW SE
406	Deming Creek	36 S	15 E	WM	10	SW SW
404	Boyd Spring	36 S	15 E	WM	4	NE SW
405	Buzz Spring	36 S	15 E	WM	5	SW NE
469	Yellow Jacket Spring Pond	37 S	12 E	WM	13	SW SE
476	Rock Pit	37 S	13 E	WM	18	SE NW
391	Chipmunk Spring	37 S	13 E	WM	6	SE SW
474	Mineral Creek	37 S	13 E	WM	8	SE SE
475	Mouse Spring	37 S	13 E	WM	9	SE SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication