

**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 389

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 389) 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 2082 to the Preliminary Evaluation of Claim 389.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 61 to the Claim and/or Preliminary Evaluation of Claim 389.
5. On May 1, 2000, Leonard Baio timely filed Contest 295 to the Claim and/or Preliminary Evaluation of Claim 389.
6. May 2, 2000, Gary Strong timely filed Contest 530 to the Claim and/or Preliminary Evaluation of Claim 389.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 763 to the Claim and/or Preliminary Evaluation of Claim 389.

8. On May 2, 2000, Robert Bartell timely filed Contest 1000 to the Claim and/or Preliminary Evaluation of Claim 389.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1235 to the Claim and/or Preliminary Evaluation of Claim 389.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1469 to the Claim and/or Preliminary Evaluation of Claim 389.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1818 to the Claim and/or Preliminary Evaluation of Claim 389.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2270 to the Claim and/or Preliminary Evaluation of Claim 389.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2506 to the Claim and/or Preliminary Evaluation of Claim 389.
14. On May 8, 2000, John Briggs timely filed Contest 4258 to the Claim and/or Preliminary Evaluation of Claim 389.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4492 to the Claim and/or Preliminary Evaluation of Claim 389.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4725 to the Claim and/or Preliminary Evaluation of Claim 389.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4966 to the Claim and/or Preliminary Evaluation of Claim 389.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5201 to the Claim and/or Preliminary Evaluation of Claim 389.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5434 to the Claim and/or Preliminary Evaluation of Claim 389.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3680: 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

¹ Berlva Pritchard voluntarily withdrew from Contest 3680 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 3680. *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 389 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 20.073 cfs as originally claimed, to 16.44 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2082, the remaining contest to Claim 389. *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 389 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 April 15, 1961 is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961), and (2) the reservation date of November 15, 1974 is based on a Declaration of Taking, November 15, 1974, Civil No. 74-894, U.S. District Court of Oregon. The priority date applicable to each aspect of the claim is set forth in the Water Right Claim Description below.

² Don Vincent voluntarily withdrew from Contest 3680 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 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 389 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. 389

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-413-0111 THROUGH 97-413-0126 (A13);
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

ADMINISTRATIVE USE ONLY FOR: Yainax GS Spring - USFS-ID 1159.

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 16.44 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 Sprague Creek			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
1157	Unnamed Reservoir	Nov. 15, 1974	0.223	2.2	33 S	8 E	WM	27	NW SW
1156	Unnamed Reservoir	Nov. 15, 1974	0.223	2.2	34 S	8 E	WM	9	SW NE
1191	Sprague River	April 15, 1961	0.557	5.5	34 S	8 E	WM	21	SE NW
1180	Sprague River	April 15, 1961	0.557	5.5	34 S	8 E	WM	29	NE NE
1193	Unnamed Reservoir	Nov. 15, 1974	0.223	2.2	34 S	9 E	WM	8	SW NE
1575	Prairie Reservoir	April 15, 1961	0.223	2.2	34 S	9 E	WM	27	SE SE
1116	Wolff Ranch	April 15, 1961	0.557	n/a	34 S	9 E	WM	32	SW SW
1135	Buck Spring Pond	April 15, 1961	0.223	2.2	34 S	11 E	WM	27	NE NW
1181	Sprague River Chiloquin Dam	April 15, 1961	0.557	5.5	35 S	7 E	WM	3	LOT 21 (NE SE)
1110	Borrow Pond	April 15, 1961	0.223	2.2	35 S	8 E	WM	12	NE SE
1109	Unnamed Pond	April 15, 1961	0.223	2.2	35 S	8 E	WM	12	NW NE
1104	Nut Pond	April 15, 1961	1.114	11	35 S	8 E	WM	13	NE NW
1888	Crystal Castle Culvert	April 15, 1961	0.557	5.5	35 S	8 E	WM	18	LOT 3 (SW NW)
1510	Vanderkamp Pond	April 15, 1961	0.223	2.2	35 S	8 E	WM	34	SE NW
1113	Mouth S'Ocholis Canyon	April 15, 1961	0.557	5.5	35 S	9 E	WM	8	NW NE
1095	Quarry Pond	April 15, 1961	0.223	2.2	35 S	9 E	WM	15	SE SW
1097	Cedar Spring Culvert	April 15, 1961	0.223	2.2	35 S	9 E	WM	20	SW SW
1098	Cedar Spring	April 15, 1961	0.557	5.5	35 S	9 E	WM	20	SW SW
1205	North Fork Trout Creek	April 15, 1961	0.557	5.5	35 S	9 E	WM	35	SW SW
1150	Pothole Pond	April 15, 1961	0.223	2.2	35 S	10 E	WM	6	NW SE
1518	Hightable	April 15, 1961	0.223	2.2	35 S	11 E	WM	9	NE SE
1121	Logging Camp Pond	April 15, 1961	0.223	2.2	36 S	8 E	WM	3	NW NW
1122	A Paw Pond	April 15, 1961	0.223	2.2	36 S	8 E	WM	4	NE NE
1139	Edgewood Reservoir	April 15, 1961	0.223	2.2	36 S	8 E	WM	25	NE SE
1203	Trout Creek Culvert	April 15, 1961	0.557	5.5	36 S	9 E	WM	15	NE NW
1201	South Fork Trout Creek	April 15, 1961	0.557	5.5	36 S	9 E	WM	15	NW SE
1202	Trout Creek Ranch	April 15, 1961	0.557	5.5	36 S	9 E	WM	16	NE NW
1200	Jims Reservoir	April 15, 1961	0.557	5.5	36 S	9 E	WM	28	NW NW
1198	Unnamed Culvert	April 15, 1961	0.557	5.5	36 S	9 E	WM	29	NE NE
1199	Unnamed Culvert	April 15, 1961	0.557	5.5	36 S	9 E	WM	29	NE NE
1197	Unnamed Culvert	April 15, 1961	0.557	5.5	36 S	9 E	WM	29	NW NE
1161	Cherry Creek Spring	April 15, 1961	0.557	5.5	36 S	10 E	WM	27	SE NW
1163	Switchback Pond	April 15, 1961	0.557	5.5	36 S	10 E	WM	29	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								
1159	Yainax GS Spring	April 15, 1961	0.06	n/a	36 S	10 E	WM	33	NW NE
1160	Yainax Pond	April 15, 1961	0.557	5.5	36 S	10 E	WM	33	NW NE
1169	North Rim Cliney Flat	April 15, 1961	0.223	2.2	36 S	11 E	WM	28	SE SE
1167	Cliney Pond	April 15, 1961	0.223	2.2	36 S	11 E	WM	33	LOT 3 (SW SE)
1504	Yainax Ridge Culvert	April 15, 1961	0.223	2.2	36 S	11 E	WM	33	NE SW
1206	Little Rim Reservoir	April 15, 1961	0.223	2.2	37 S	11 E	WM	3	SW NE
458	Whiskey Creek	April 15, 1961	0.223	2.2	37 S	11 E	WM	13	NE NW
373	Vic Reservoir	April 15, 1961	0.557	5.5	37 S	12 E	WM	7	LOT 3 (NW SW)
375	Charcoal Pond	April 15, 1961	0.223	2.2	37 S	12 E	WM	9	NE NW

THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

Source		Point of Diversion Location and Place of Use Location				
All Tributary to Sprague Creek		Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name					
1157	Unnamed Reservoir	33 S	8 E	WM	27	NW SW
1156	Unnamed Reservoir	34 S	8 E	WM	9	SW NE
1191	Sprague River	34 S	8 E	WM	21	SE NW
1180	Sprague River	34 S	8 E	WM	29	NE NE
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1575	Prairie Reservoir	34 S	9 E	WM	27	SE SE
1116	Wolff Ranch	34 S	9 E	WM	32	SW SW
1135	Buck Spring Pond	34 S	11 E	WM	27	NE NW
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1109	Unnamed Pond	35 S	8 E	WM	12	NW NE
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1113	Mouth S'Ocholis Canyon	35 S	9 E	WM	8	NW NE
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1159	Yainax GS Spring	36 S	10 E	WM	33	NW NE
1160	Yainax Pond	36 S	10 E	WM	33	NW NE
1169	North Rim Cliney Flat	36 S	11 E	WM	28	SE SE
1167	Cliney Pond	36 S	11 E	WM	33	LOT 3 (SW SE)
1504	Yainax Ridge Culvert	36 S	11 E	WM	33	NE SW
1206	Little Rim Reservoir	37 S	11 E	WM	3	SW NE
458	Whiskey Creek	37 S	11 E	WM	13	NE NW
373	Vic Reservoir	37 S	12 E	WM	7	LOT 3 (NW SW)
375	Charcoal Pond	37 S	12 E	WM	9	NE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication