

**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 390

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 390) 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 2083 to the Preliminary Evaluation of Claim 390.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 62 to the Claim and/or Preliminary Evaluation of Claim 390.
5. On May 1, 2000, Leonard Baio timely filed Contest 296 to the Claim and/or Preliminary Evaluation of Claim 390.
6. On May 2, 2000, Gary Strong timely filed Contest 531 to the Claim and/or Preliminary Evaluation of Claim 390.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 764 to the Claim and/or Preliminary Evaluation of Claim 390.

8. On May 2, 2000, Robert Bartell timely filed Contest 1001 to the Claim and/or Preliminary Evaluation of Claim 390.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1236 to the Claim and/or Preliminary Evaluation of Claim 390.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1470 to the Claim and/or Preliminary Evaluation of Claim 390.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1790 to the Claim and/or Preliminary Evaluation of Claim 390.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1819 to the Claim and/or Preliminary Evaluation of Claim 390.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2271 to the Claim and/or Preliminary Evaluation of Claim 390.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2507 to the Claim and/or Preliminary Evaluation of Claim 390.
15. On May 8, 2000, John Briggs timely filed Contest 4259 to the Claim and/or Preliminary Evaluation of Claim 390.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4493 to the Claim and/or Preliminary Evaluation of Claim 390.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4726 to the Claim and/or Preliminary Evaluation of Claim 390.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 4967 to the Claim and/or Preliminary Evaluation of Claim 390.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5202 to the Claim and/or Preliminary Evaluation of Claim 390.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5435 to the Claim and/or Preliminary Evaluation of Claim 390.
21. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3681: 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.

22. 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.
23. 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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Ambrose W. McAuliffe and Roger Nicholson. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
24. On December 26, 2002, the Klamath Project Water Users withdrew with prejudice Contest 3681. *See* WITHDRAWAL OF KLAMATH PROJECT WATER USER'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 26, 2002).
25. On December 30, 2002, the USFS amended Claim 390 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 8.096 (NOTE: total on original sheet reflected an addition error and showed 5.405) cfs as originally claimed, to 6.35 cfs."
26. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2083, the remaining contest to Claim 390. *See* UNITED STATES NOTICE OF WITHDRAWAL OF CONTESTS (Mar. 11, 2003).
27. On April 2, 2003, the Adjudicator withdrew Case 007 from the Office of Administrative Hearings.
28. The place of use underlying Claim 390 is within a federal reservation of land that is owned by the Claimant.
29. The Claimant owns the place of use underlying Claim 390.
30. 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 Berlva Pritchard voluntarily withdrew from Contest 3681 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3681 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

(1) the reservation date of June 4, 1897 is based on Presidential Proclamation of September 28, 1893, No 6, 28 Stat. 1240 and the Organic Administration Act of June 4, 1897, 16 U.S.C. §§ 473-475, 477-482 and 551, and (2) 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). The priority date applicable to each aspect of the claim is set forth in the Water Right Claim Description below.

31. 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 390 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. 390

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-414-0109 THROUGH 97-414-0112 (A14);
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 6.35 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 ARE AS FOLLOWS:


Source		Priority Date	Quantity of Water		Point of Diversion Location				
USFS-ID	Name		CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
All Tributary to the Wood River									
1430	Cedar Spring	June 4, 1897	0.557	5.5	32 S	6 E	WM	23	SW NW
1426	Annie Creek Bridge	June 4, 1897	1.114	11	32 S	6 E	WM	25	SE SE
1582	Goosenest Spring	June 4, 1897	0.557	5.5	32 S	6 E	WM	33	NE NW
1370	Codys Bear Camp	June 4, 1897	1.114	11	33 S	6 E	WM	11	NW SW
1367	Sevenmile GS Bridge	June 4, 1897	0.557	5.5	33 S	6 E	WM	14	SE SE
1365	Klamath Point Pond	June 4, 1897	0.223	2.2	33 S	6 E	WM	21	SE SE
1366	Stans Spring	June 4, 1897	1.114	11	33 S	6 E	WM	23	SE NE
1259	Fort Klamath	April 15, 1961	0.557	5.5	33 S	7.50 E	WM	15	LOT 22 (NW SW)
1512	Fort Creek	April 15, 1961	0.557	5.5	33 S	7.50 E	WM	23	SE NW

THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1430	Cedar Spring	32 S	6 E	WM	23	SW NW
1426	Annie Creek Bridge	32 S	6 E	WM	25	SE SE
1582	Goosenest Spring	32 S	6 E	WM	33	NE NW
1370	Codys Bear Camp	33 S	6 E	WM	11	NW SW
1367	Sevenmile GS Bridge	33 S	6 E	WM	14	SE SE
1365	Klamath Point Pond	33 S	6 E	WM	21	SE SE
1366	Stans Spring	33 S	6 E	WM	23	SE NE
1259	Fort Klamath	33 S	7.50 E	WM	15	LOT 22 (NW SW)
1512	Fort Creek	33 S	7.50 E	WM	23	SE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication