

**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 391

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 391) 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 2084 to the Preliminary Evaluation of Claim 391.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 63 to the Claim and/or Preliminary Evaluation of Claim 391.
5. On May 1, 2000, Leonard Baio timely filed Contest 297 to the Claim and/or Preliminary Evaluation of Claim 391.
6. On May 2, 2000, Gary Strong timely filed Contest 532 to the Claim and/or Preliminary Evaluation of Claim 391.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 765 to the Claim and/or Preliminary Evaluation of Claim 391.
8. On May 2, 2000, Robert Bartell timely filed Contest 1002 to the Claim and/or Preliminary Evaluation of Claim 391.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1237 to the Claim and/or Preliminary Evaluation of Claim 391.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1471 to the Claim and/or Preliminary Evaluation of Claim 391.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1791 to the Claim and/or Preliminary Evaluation of Claim 391.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1820 to the Claim and/or Preliminary Evaluation of Claim 391.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2272 to the Claim and/or Preliminary Evaluation of Claim 391.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2508 to the Claim and/or Preliminary Evaluation of Claim 391.
15. On May 8, 2000, John Briggs timely filed Contest 4260 to the Claim and/or Preliminary Evaluation of Claim 391.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4494 to the Claim and/or Preliminary Evaluation of Claim 391.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4727 to the Claim and/or Preliminary Evaluation of Claim 391.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 4968 to the Claim and/or Preliminary Evaluation of Claim 391.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5203 to the Claim and/or Preliminary Evaluation of Claim 391.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5436 to the Claim and/or Preliminary Evaluation of Claim 391.
21. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3682: 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 3682. *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 391 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 9.479 (NOTE: total on original sheet reflected an addition error and showed 8.922) cfs as originally claimed, to 9.359 cfs."
26. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2084, the remaining contest to Claim 391. *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 391 is within a federal reservation of land that is owned by the Claimant.
29. 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

¹ Berlva Pritchard voluntarily withdrew from Contest 3682 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3682 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

of a federal reserved water right. This claim contains two reservation dates as follows: (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.

30. 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 391 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. 391

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-415-0114 THROUGH 97-415-0120 (A15);
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 9.359 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 Klamath Lake			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
1422	Threemile Culvert	June 4, 1897	0.557	5.5	34 S	6 E	WM	2	LOT 23 (SW NE)
1423	Threemile Quarry	June 4, 1897	0.223	2.2	34 S	6 E	WM	2	LOT 18 (NW NE)
1424	Threemile Rock Dam	June 4, 1897	1.114	11	34 S	6 E	WM	3	LOT 18 (NW SE)
1425	Charley Thompson Pond	June 4, 1897	0.223	2.2	34 S	6 E	WM	4	LOT 10 (NW NE)
1258	Threemile Culvert	June 4, 1897	0.223	2.2	34 S	6 E	WM	5	LOT 28 (NW SW)
1257	Lucy's Lake	June 4, 1897	0.223	2.2	34 S	6 E	WM	8	NE NW
1411	Nannie Creek	June 4, 1897	0.223	2.2	34 S	6 E	WM	10	SE SW
1412	Lather Mountain Access	June 4, 1897	0.223	2.2	34 S	6 E	WM	17	NW NE
1410	Cherry Creek	June 4, 1897	0.557	5.5	34 S	6 E	WM	22	SE NE
1395	Rock Creek	June 4, 1897	1.114	11	35 S	6 E	WM	3	NE SE
1396	Rock Creek Auxiliary	June 4, 1897	0.223	2.2	35 S	6 E	WM	3	SW NW
1394	Malone Spring Boatramp	June 4, 1897	0.557	5.5	35 S	6 E	WM	14	LOT 1 (NE NW)
1399	Rocky Point Boatramp	June 4, 1897	1.114	11	35 S	6 E	WM	35	LOT 5 (SE NW)
1548	Pelican Cut Canal	June 4, 1897	1.114	11	36 S	6 E	WM	10	SE NE
1406	Odessa Creek	June 4, 1897	0.557	5.5	36 S	6 E	WM	24	NW NE
1910	Barkley Spring	April 15, 1961	1.114	11	37 S	9 E	WM	6	LOT 11 (SW NW)


THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1422	Threemile Culvert	34 S	6 E	WM	2	LOT 23 (SW NE)
1423	Threemile Quarry	34 S	6 E	WM	2	LOT 18 (NW NE)
1424	Threemile Rock Dam	34 S	6 E	WM	3	LOT 18 (NW SE)
1425	Charley Thompson Pond	34 S	6 E	WM	4	LOT 10 (NW NE)
1258	Threemile Culvert	34 S	6 E	WM	5	LOT 28 (NW SW)

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1257	Lucy's Lake	34 S	6 E	WM	8	NE NW
1411	Nannie Creek	34 S	6 E	WM	10	SE SW
1412	Lather Mountain Access	34 S	6 E	WM	17	NW NE
1410	Cherry Creek	34 S	6 E	WM	22	SE NE
1395	Rock Creek	35 S	6 E	WM	3	NE SE
1396	Rock Creek Auxiliary	35 S	6 E	WM	3	SW NW
1394	Malone Spring Boatramp	35 S	6 E	WM	14	LOT 1 (NE NW)
1399	Rocky Point Boatramp	35 S	6 E	WM	35	LOT 5 (SE NW)
1548	Pelican Cut Canal	36 S	6 E	WM	10	SE NE
1406	Odessa Creek	36 S	6 E	WM	24	NW NE
1910	Barkley Spring	37 S	9 E	WM	6	LOT 11 (SW NW)

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication