

**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 392

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 392) 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 2085 to the Preliminary Evaluation of Claim 392.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 64 to the Claim and/or Preliminary Evaluation of Claim 392.
5. On May 1, 2000, Leonard Baio timely filed Contest 298 to the Claim and/or Preliminary Evaluation of Claim 392.

6. On May 2, 2000, Gary Strong timely filed Contest 533 to the Claim and/or Preliminary Evaluation of Claim 392.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 766 to the Claim and/or Preliminary Evaluation of Claim 392.
8. On May 2, 2000, Robert Bartell timely filed Contest 1003 to the Claim and/or Preliminary Evaluation of Claim 392.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1238 to the Claim and/or Preliminary Evaluation of Claim 392.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1472 to the Claim and/or Preliminary Evaluation of Claim 392.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1792 to the Claim and/or Preliminary Evaluation of Claim 392.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1821 to the Claim and/or Preliminary Evaluation of Claim 392.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2273 to the Claim and/or Preliminary Evaluation of Claim 392.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2509 to the Claim and/or Preliminary Evaluation of Claim 392.
15. On May 8, 2000, John Briggs timely filed Contest 4261 to the Claim and/or Preliminary Evaluation of Claim 392.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4495 to the Claim and/or Preliminary Evaluation of Claim 392.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4728 to the Claim and/or Preliminary Evaluation of Claim 392.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 4969 to the Claim and/or Preliminary Evaluation of Claim 392.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5204 to the Claim and/or Preliminary Evaluation of Claim 392.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5437 to the Claim and/or Preliminary Evaluation of Claim 392.

21. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3683: 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. On May 8, 2000, the Horsefly Irrigation District, Langell Valley Irrigation District Medford Irrigation District, and Rogue River Valley Irrigation timely filed Contest 3243 to Claim 392.
23. 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.
24. 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).
25. On December 2, 2002, the Medford Irrigation District and Rogue River Valley Irrigation District withdrew from Contest 3243. *See* WITHDRAWAL OF MEDFORD IRRIGATION DISTRICT AND ROGUE RIVER VALLEY IRRIGATION DISTRICT CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 2, 2002).
26. On December 13, 2002, the Langell Valley Irrigation District and Horsefly Irrigation District withdrew without prejudice Contest 3243. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT (Dec. 13, 2002).
27. On December 26, 2002, the Klamath Project Water Users withdrew with prejudice Contest 3683. *See* WITHDRAWAL OF KLAMATH PROJECT WATER USER’S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 26, 2002).

¹ Berlva Pritchard voluntarily withdrew from Contest 3683 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3683 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

28. On December 30, 2002, the USFS amended Claim 392 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," the rate was reduced "from 12.596 cfs as originally claimed, to 12.427 cfs," and "[f]or Uses identified as 1389, 1987 [sic], 1388, 1384, 1486, 1500, 1375, 1376, and 1382 . . .the Priority Date was 06/04/1897, and has been amended to 04/01/1910."
29. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2085, the remaining contest to Claim 392. *See* UNITED STATES NOTICE OF WITHDRAWAL OF CONTESTS (Mar. 11, 2003).
30. On April 2, 2003, the Adjudicator withdrew Case 007 from the Office of Administrative Hearings.
31. The place of use underlying Claim 392 is within a federal reservation of land that is owned by the Claimant.
32. 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 unless the claimant amended the priority date to a later date. This claim contains a reservation date of June 4, 1897, and is based on the 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. The priority dates applicable to each aspect of the claim are set forth in the Water Right Claim Description below.
33. 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 392 is approved as amended by the USFS and as set forth in the following Water Right Claim Description.

CLAIM NO. 392

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-416-0090 THROUGH 97-416-0094 (A16);
 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 12.427 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				
All Tributary to Fourmile Creek			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
1416	Cold Spring	June 4, 1897	0.223	2.2	35 S	5 E	WM	12	NE NW
1414	Big Meadow Culvert	June 4, 1897	0.223	2.2	35 S	5 E	WM	14	SE SE
1415	Big Meadow Pothole	June 4, 1897	0.223	2.2	35 S	5 E	WM	14	NE SW
1413	Lost Creek	June 4, 1897	0.06	n/a	35 S	5 E	WM	24	NW SW
1392	Lost Creek	June 4, 1897	0.557	5.5	35 S	5 E	WM	26	SW NE
1390	Unnamed Pond	June 4, 1897	0.223	2.2	36 S	5 E	WM	11	NE SW
1389	Fourmile Creek	April 1, 1910	0.557	5.5	36 S	5 E	WM	14	NW NE
1387	Billie Creek	April 1, 1910	0.557	5.5	36 S	5 E	WM	16	SW SW
1388	Lake Bernice	April 1, 1910	0.557	5.5	36 S	5 E	WM	16	NW NW
1386	Cascade Canal	June 4, 1897	0.557	5.5	36 S	5 E	WM	20	NE SE
1384	Unnamed Reservoir	April 1, 1910	0.223	2.2	36 S	5 E	WM	26	NE NW

Source		Priority Date	Quantity of Water		Point of Diversion Location				
All Tributary to Fourmile Creek			CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name								
1486	Billie Creek	April 1, 1910	0.557	5.5	36 S	5 E	WM	33	SW NE
1383	Trib Seldom Creek	June 4, 1897	0.557	5.5	36 S	5 E	WM	36	SW SE
1409	Varney Creek	June 4, 1897	0.557	5.5	36 S	6 E	WM	9	LOT 8 (SW SE)
1500	Wamplers Ditch	April 1, 1910	0.557	5.5	36 S	6 E	WM	9	SW NE
1375	Fourmile Flat	April 1, 1910	1.114	11	36 S	6 E	WM	18	SE SE
1376	Fourmile Fire Chance	April 1, 1910	0.223	2.2	36 S	6 E	WM	18	SW NE
1382	Fourmile Quarry	April 1, 1910	1.114	11	36 S	6 E	WM	18	NW SE
1377	Unnamed Reservoir/Spring	June 4, 1897	0.557	5.5	36 S	6 E	WM	28	SW NW
1381	Unnamed Pothole	June 4, 1897	0.223	2.2	36 S	6 E	WM	28	NW SW
1404	Varney Creek Culvert	June 4, 1897	0.557	5.5	36 S	6 E	WM	28	NW NE
1483	Rainbow Bay	June 4, 1897	0.557	5.5	37 S	5 E	WM	3	LOT 6 (NE SE)
1379	Dry Creek Bay	June 4, 1897	0.223	2.2	37 S	5 E	WM	4	SE NE
1380	Dry Creek	June 4, 1897	0.557	5.5	37 S	5 E	WM	4	SW NE
1371	Rainbow Creek	June 4, 1897	0.557	5.5	37 S	5 E	WM	22	SW NE
1372	Upper Rainbow Creek	June 4, 1897	0.557	5.5	37 S	5 E	WM	22	NW SE

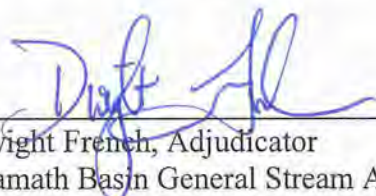
THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1416	Cold Spring	35 S	5 E	WM	12	NE NW
1414	Big Meadow Culvert	35 S	5 E	WM	14	SE SE
1415	Big Meadow Pothole	35 S	5 E	WM	14	NE SW
1413	Lost Creek	35 S	5 E	WM	24	NW SW
1392	Lost Creek	35 S	5 E	WM	26	SW NE
1390	Unnamed Pond	36 S	5 E	WM	11	NE SW
1389	Fourmile Creek	36 S	5 E	WM	14	NW NE
1387	Billie Creek	36 S	5 E	WM	16	SW SW
1388	Lake Bernice	36 S	5 E	WM	16	NW NW
1386	Cascade Canal	36 S	5 E	WM	20	NE SE
1384	Unnamed Reservoir	36 S	5 E	WM	26	NE NW
1486	Billie Creek	36 S	5 E	WM	33	SW NE
1383	Trib Seldom Creek	36 S	5 E	WM	36	SW SE

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1409	Varney Creek	36 S	6 E	WM	9	LOT 8 (SW SE)
1500	Wamplers Ditch	36 S	6 E	WM	9	SW NE
1375	Fourmile Flat	36 S	6 E	WM	18	SE SE
1376	Fourmile Fire Chance	36 S	6 E	WM	18	SW NE
1382	Fourmile Quarry	36 S	6 E	WM	18	NW SE
1377	Unnamed Reservoir/Spring	36 S	6 E	WM	28	SW NW
1381	Unnamed Pothole	36 S	6 E	WM	28	NW SW
1404	Varney Creek Culvert	36 S	6 E	WM	28	NW NE
1483	Rainbow Bay	37 S	5 E	WM	3	LOT 6 (NE SE)
1379	Dry Creek Bay	37 S	5 E	WM	4	SE NE
1380	Dry Creek	37 S	5 E	WM	4	SW NE
1371	Rainbow Creek	37 S	5 E	WM	22	SW NE
1372	Upper Rainbow Creek	37 S	5 E	WM	22	NW SE

End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication