

**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 393

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 393) 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 2086 to the Preliminary Evaluation of Claim 393.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 65 to the Claim and/or Preliminary Evaluation of Claim 393.
5. On May 1, 2000, Leonard Baio timely filed Contest 299 to the Claim and/or Preliminary Evaluation of Claim 393.
6. On May 2, 2000, Gary Strong timely filed Contest 534 to the Claim and/or Preliminary Evaluation of Claim 393.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 767 to the Claim and/or Preliminary Evaluation of Claim 393.
8. On May 2, 2000, Robert Bartell timely filed Contest 1004 to the Claim and/or Preliminary Evaluation of Claim 393.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1239 to the Claim and/or Preliminary Evaluation of Claim 393.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1473 to the Claim and/or Preliminary Evaluation of Claim 393.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1822 to the Claim and/or Preliminary Evaluation of Claim 393.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2274 to the Claim and/or Preliminary Evaluation of Claim 393.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2510 to the Claim and/or Preliminary Evaluation of Claim 393.
14. On May 8, 2000, John Briggs timely filed Contest 4262 to the Claim and/or Preliminary Evaluation of Claim 393.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4496 to the Claim and/or Preliminary Evaluation of Claim 393.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4729 to the Claim and/or Preliminary Evaluation of Claim 393.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4970 to the Claim and/or Preliminary Evaluation of Claim 393.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5205 to the Claim and/or Preliminary Evaluation of Claim 393.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5438 to the Claim and/or Preliminary Evaluation of Claim 393.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3684: 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.

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 3684. *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 393 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 3.002 cfs as originally claimed, to 2.717 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2086, the remaining contest to Claim 393. *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 393 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 March 2, 1907 is based on Presidential Proclamation of March 2, 1907, and (2) the reservation date of June 21, 1956 is based on an Order Exchanging Administrative Jurisdiction, June 21, 1956, 6-23-56, Fed. Reg. 4525. The priority date

¹ Berlva Pritchard voluntarily withdrew from Contest 3684 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3684 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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.

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 393 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. 393

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-417-0115 THROUGH 97-417-0116 (A17);
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 2.717 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		Place of Use Location				
USFS-ID	Name		CFS	AF/Year	Twp	Rng	Mer	Sec	Q-Q
All Tributary to Spencer Creek									
1499	Trib to Buck Lake	June 21, 1956	0.223	2.2	38 S	5 E	WM	3	SE SE
1571	Fire Chance	June 21, 1956	0.557	5.5	38 S	6 E	WM	4	SE SW
1498	790 Culvert	June 21, 1956	0.6	n/a	38 S	6 E	WM	7	SE NW
1417	Spencer Creek	Mar. 2, 1907	1.114	11	38 S	6 E	WM	18	NW SE
1418	North Fork Spencer Creek	Mar. 2, 1907	0.223	2.2	38 S	6 E	WM	18	SE NW

THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
1499	Trib to Buck Lake	38 S	5 E	WM	3	SE SE
1571	Fire Chance	38 S	6 E	WM	4	SE SW
1498	790 Culvert	38 S	6 E	WM	7	SE NW
1417	Spencer Creek	38 S	6 E	WM	18	NW SE
1418	North Fork Spencer Creek	38 S	6 E	WM	18	SE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication