

**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)	PARTIAL ORDER OF
THE KLAMATH TRIBES AND THE)	DETERMINATION
UNITED STATES DEPARTMENT OF)	
INTERIOR, BUREAU OF INDIAN)	
AFFAIRS AS TRUSTEE ON BEHALF OF)	Water Right Claims 641 – 657
THE KLAMATH TRIBES)	(Sprague River and its tributaries)
)	

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE PROPOSED ORDER**

1. Claims 641 – 657 and that Portion of Claim 612 pertaining to the Sprague River and its tributaries, (Claimants: THE KLAMATH TRIBES; AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA)) and their associated contests¹ were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 280.
2. Claim 612 was filed by the Klamath Tribes. It is a composite claim that incorporates by reference each of the United States Bureau of Indian Affairs’ claims based on the hunting, trapping, fishing, and gathering purposes of the Klamath Treaty of 1864. The portion of Claim 612 pertaining to the Sprague River incorporates by reference BIA Claims 641 – 657.

¹ Claim 641: 21, 2808, 3040, 3343, 3902, 4030; Claim 642: 22, 3041, 3344, 3903, 4031; Claim 643: 23, 3042, 3345, 3904, 4032; Claim 644: 24, 3043, 3346, 3905, 4033; Claim 645: 25, 3044, 3347, 3906, 4034; Claim 646: 26, 3045, 3348, 3907, 4035; Claim 647: 27, 3046, 3349, 3908, 4036; Claim 648: 3047, 3350, 3909, 4037; Claim 649: 3048, 3351, 3910, 4038; Claim 650: 3049, 3352, 3911, 4039; Claim 651: 3050, 3353, 3912, 4041; Claim 652: 3051, 3354, 3913, 4042; Claim 653: 3052, 3355, 3914, 4043; Claim 654: 3053, 3356, 3915, 4044; Claim 655: 3054, 3357, 3916, 4045; Claim 656: 3055, 3358, 3917, 4046; Claim 657: 3056, 3359, 3918, 4047; Claim 612: 28, 2730, 2802, 3016, 3249, 3314, 3644, 4002.
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3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 641 – 657, and that Portion of Claim 612 pertaining to the Sprague River and its tributaries on December 1, 2011.
4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, and (2) the Upper Basin Contestants. Responses to exceptions were timely filed by the United States and the Klamath Tribes.
5. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 641 – 657 and that Portion of Claim 612 pertaining to the Sprague River and its tributaries. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.8, A.9, and A.10, below.
6. For administrative convenience, OWRD has addressed Claim 612 in a separate Partial Order of Determination for Claim 612. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 612 and the United States’ Claims 641 – 657, and the ownership of the water rights that are recognized in these claims.
7. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “Procedural History” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted in its entirety.
 - c. The “Expert Testimony” is adopted in its entirety.
 - d. The “Issues” is adopted is adopted in its entirety.
 - e. The “Findings of Fact” is adopted with modifications, as set forth in Section A.8, below.
 - f. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.9, below.
 - g. The “Opinion” is adopted with modifications, as set forth in Section A.10, below.
 - h. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claims 641 – 649 and 652 - 653. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 and A.10, below, the outcome of the Order has been modified (1) to correct the description of the upper reach boundary for Claim 649, and (2) to recognize rights for Claims 647 and 652 for only those portions of claimed reaches that lie within the former reservation boundary. Claims 650, 651, 654, 655, 656 and 657 are denied because they lie entirely outside of the former reservation boundary.
8. **Findings of Fact.** Within the Proposed Order’s “Findings of Fact” section, Findings of Facts 38, 41, 48, 50, 54, 58, 60, 66, 70, 74 and 78 are modified as follows (additions are shown in “underline” text, deletions are shown in “~~striketrough~~” text):

a. *Modifications to Finding of Fact 38:*

38. Claim 647 claimed instream flows in a reach of the Sprague River extending from the confluence of the north and south forks of the Sprague River to ~~Kirk Spring~~ USGS Gage Sprague River near Beatty (11497500).² The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 176 cfs to 752 cfs. The claimed flows for riparian habitat maintenance ranged from 176 cfs to 1,600 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 335 cfs and a cap flow of 3,208 cfs. The uppermost portion of Claim 647 lies outside the eastern boundary of the former reservation. The portion of Claim 647 upstream of approximately River Mile 79 lies outside (east of) the former reservation boundary. (OWRD Ex. 35 at 1 through 6.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

b. *Modifications to Finding of Fact 41:*

41. Claim 647 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 36 S, R 14 E, S 19, NE¼ NW¼, distance from NW corner S 49° 2' 18" E, 2,001.6 ft. The lower reach boundary is identified as T 36 S, R 12 E, S 13, NW¼ SE¼, distance from SE corner N 37° 51' 23" W, 2,647.7 ft. (OWRD Ex. 35 at 19.) A portion of Claim 647 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, which is located at the eastern edge of the SE¼ NE¼, Section 24, T 36 S, R 13 E, W.M., distance from NE corner S 1° 0' 24" E, 1450 ft.³

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

² The change to the name of the lower reach boundary for Claim 647 is made for consistency with Claim 646. The lower reach boundary of Claim 647 is the upper reach boundary of Claim 646, and the name of this location should be consistent between claims. (OWRD Ex. 35 at 18-19; OWRD Ex. 34 at 16.) OWRD chose the USGS Gage name over Kirk Spring because the USGS Gage is named on the United States' claim map, and Kirk Spring is not. *Id.*

³ Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27

c. *Modifications to Finding of Fact 48:*

48. Claim 649 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 36S, R 12E, S 30, SW SE¼ SW¼, distance from SW Corner N 81° 35'59" E, 1,997.1 ft. The lower reach boundary is identified as T 36S, R 11E, S 12, SE¼, SW¼, distance from SW corner N 49° 48'28" E, 1,892.3 ft. (OWRD Ex. 37 at 15.)

Reason for Modification: The Proposed Order contains an error in the description of the upper reach boundary for Claim 649.

d. *Modifications to Finding of Fact 50:*

50. Claim 650 claimed instream flows in a reach of the North Fork of the Sprague River extending from Balley Flats to the confluence of the north and south forks of the Sprague River. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 45 cfs to 73 cfs. The claimed flows for riparian habitat maintenance ranged from 68 cfs to 900 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 70 cfs a cap flow of 1,684 cfs. ~~Claim 650 claims water rights in a portion of the stream reach outside reservation boundary.~~ The entirety of the stream reach claimed in Claim 650 lies outside the former reservation boundary. (OWRD Ex. 38 at 1 through 6.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

e. *Modifications to Finding of Fact 54:*

54. Claim 651 claimed instream flows in a reach of the North Fork of the Sprague River extending from Boulder Creek to Balley Flats. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 30 cfs to 60 cfs. The claimed flows for riparian habitat maintenance ranged from 40 cfs to 900 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 40 cfs and a cap flow of 1,599 cfs. ~~Claim 651 claims water rights in a portion of~~

~~the stream reach outside reservation boundary.~~ The entirety of the stream reach claimed in Claim 651 lies outside the former reservation boundary. (OWRD Ex. 39 at 1 through 4.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

f. *Modifications to Finding of Fact 58:*

58. Claim 652 claimed instream flows in a reach of Five Mile Creek extending from the Lower United States Forest Service (USFS) Boundary to the North Fork of the Sprague River. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 20 cfs to 50 cfs. The claimed flows for riparian habitat maintenance ranged from 38 cfs to 220 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 38 cfs and a cap flow of 434 cfs. A portion of the lower end of this reach also extends beyond the eastern boundary of the former reservation. The portion of Claim 652 downstream of approximately River Mile 0.5 lies outside (east of) the former reservation boundary. (OWRD Ex. 40 at 1 through 4.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

g. *Modifications to Finding of Fact 60:*

60. Claim 652 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designation. The township-range description for the upper reach boundary is identified as T ~~36~~ 35 S, R 13 E, S 25, NW $\frac{1}{4}$ NE $\frac{1}{4}$, distance from NE corner S 88° 53' 52" W, 1673 ft. The lower reach boundary is identified as T 36 S, R 14 E, S 7, SW $\frac{1}{4}$ NW $\frac{1}{4}$, distance from SW corner N 44° 3' 42" E, 1,987.8 ft. (OWRD Ex. 40 at 16.) A portion of Claim 652 lies outside the former reservation boundary. The lower reach boundary is therefore limited to within the reservation boundary, which is located at the

eastern edge of the SE¼ SE¼, Section 1, T 36 S, R 13 E, W.M. , distance from SE corner N 1° 1' 56" W, 272 ft.⁴

Reason for Modification: The Proposed Order contains an error in the description of the upper reach boundary for Claim 652. Also, to identify the portion of the lower claimed reach that lies outside the boundary of the former reservation.

h. *Modifications to Finding of Fact 66:*

66. Claim 654 claimed instream flows in a reach of the South Fork of the Sprague River extending from Fishhole Creek to the confluence of the north and south forks of the Sprague River. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 114 cfs to 480 cfs. The claimed flows for riparian habitat maintenance ranged from 114 cfs to 980 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 214 cfs and a cap flow of 1,856 cfs. Claim 654 claims water rights in a portion of the Sprague River outside reservation boundary. The entirety of the stream reach claimed in Claim 654 lies outside the former reservation boundary. (OWRD Ex. 42 at 1 through 4.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

i. *Modifications to Finding of Fact 70:*

70. Claim 655 claimed instream flows in a reach of the South Fork of the Sprague River extending from Ish Tish Creek to Fishhole Creek. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 45 cfs to 50 cfs. The claimed flows for riparian habitat maintenance ranged from 63 cfs to 610 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 81 cfs and a cap flow of 1,169 cfs. ~~Claim 655 claims water rights in a portion of the stream reach outside reservation boundary.~~ The entirety of the

⁴ Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27.
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stream reach claimed in Claim 655 lies outside the former reservation boundary.
(OWRD Ex. 43 at 1 through 6.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

j. *Modifications to Finding of Fact 74:*

74. Claim 656 claimed instream flows in a reach of the South Fork of the Sprague River extending from Brownsworth Creek to Ish Tish Creek. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 46 cfs to 130 cfs. The claimed flows for riparian habitat maintenance ranged from 46 cfs to 590 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 64 cfs and a cap flow of 1,073 cfs. ~~Claim 656 claims water rights in a portion of the stream reach outside reservation boundary.~~ The entirety of the stream reach claimed in Claim 656 lies outside the former reservation boundary. (OWRD Ex. 44 at 1 through 4.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

k. *Modifications to Finding of Fact 78:*

78. Claim 657 claimed instream flows in a reach of Demming Creek extending from the source of Demming Creek to the South Fork of the Sprague River. The claim asserted a water right for the three components for the period January 1 through December 31 each year. The claimed flows for physical habitat ranged from 4 cfs to 10 cfs. The claimed flows for riparian habitat maintenance ranged from 4 cfs to 105 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 5 cfs and a cap flow of 166 cfs. ~~Claim 657 claims water rights in a portion of the stream reach outside reservation boundary.~~ The entirety of the stream reach claimed in Claim 657 lies outside the former reservation boundary. (OWRD ex. 45 at 1 through 8.)

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

9. **Conclusions of Law.** Within the Proposed Order’s “Conclusions of Law” section, Conclusion of Law 2 is modified as follows (additions are shown in underline text):

2. Claimants are not entitled to claim instream flows outside the boundaries of the former reservation for Claims 650, 651, 654, 655, 656, and 657. Claimants are not entitled to claim instream flows for the off-reservation portions of Claims 647 and 652. ~~, as well as off reservation portions of Claims 647 and 652 in order to fulfill the purposes of the reservation.~~

Reason for Modification: To make the Conclusions of Law consistent with OWRD’s interpretation of the law.

10. **Opinion.** Within the Proposed Order’s “Opinion” section, Section VII (Proposed Order at 42-43) is replaced in its entirety as follows:

VII. Claims for instream flows in tributaries outside the boundaries of the former reservation.

Claimants filed claims for instream water rights for several streams and reaches that lie either partially or entirely outside the former reservation boundaries. Claims 647 and 652 each encompass small portions of reaches outside the eastern boundary of the former reservation. In addition, the entirety of each reach in Claims 650, 651, and 654 through 657 are situated outside the former reservation. Claimants assert these off-reservation waters are necessary to preservation of several treaty species of fish, including Redband and Bull trout and several species of suckers. In addition, Claimant presented evidence indicating many of these off-reservation waters were historically used by Chinook salmon and, presumably, would be used again once these species are reintroduced into the basin. OWRD and Contestants each contend Claimants are not entitled to claim water rights outside the boundaries of the former reservation.

A. The Claimants’ claims for off-reservation water rights are not supported by the underlying principles of the federal reserved water right doctrine

As is described in detail below, there is no federal precedent in support of off-reservation federal reserved water rights. Nor is there any basis for expanding the federal reserved water right doctrine to include implied off-reservation federal reserved water rights.

The federal reserved water right doctrine is judge-made law. It determines whether a court should imply that the federal government intended to create a water right when reserving a specific piece of land for a specific purpose,

notwithstanding the fact that neither Congress nor the executive branch explicitly created a water right to benefit that land.

Recognizing the origins of the doctrine, the United States Supreme Court has found that federal reserved water right claims require “careful examination,” both “because the reservation [of water] is implied, rather than expressed” and because, “[w]here Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to the state law.” *United States v. New Mexico*, 438 US 696, 701-02 (1978).

Allowing implied off-reservation federal reserved water rights would be at odds with this admonition. Recognition of such rights would give the implied right in water a greater scope than the explicit right in land. A federal reservation of land has an explicitly defined, geographically limited scope. The primary purposes of that reservation of land apply only within the reservation’s explicitly defined boundaries. Recognition of implied off-reservation federal reserved water rights would allow the *implied* exercise of federal authority (the reservation of water) to greatly exceed the *explicit* exercise of federal authority, by permitting an implied reservation of water that could greatly exceed the boundaries of the explicit reservation of land.

This is not merely a theoretical concern. An implied reservation of water to benefit a reservation of land for the harvest of anadromous fish – no matter how small the reservation of land or how significant the fishery – could result in implied water rights ranging from the ocean up to the headwaters of all of a river’s tributaries. So construed, the judicially created federal reserved water rights doctrine would completely undermine Congress’s historical deference to state water law.

The implied creation of a water right potentially far greater in geographic scope than the explicit reservation of land does not square with the *New Mexico* court’s directive to treat the federal reserved water right doctrine conservatively. OWRD therefore concludes that it is inappropriate to so dramatically expand the federal reserved water right doctrine.

B. The cases relied on in support of an off-reservation water right are inapplicable

None of the cases cited by the Claimants in support of off-reservation water rights to support on-reservation hunting and fishing rights are applicable. The cited cases are not determinative of the issue at hand. Nor do they provide persuasive support for the Claimants’ position. The Claimants cite to *Arizona v. California*, 376 US 340 (1964); *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1033-35 (9th Cir. 1985); *Washington Dep’t of Ecology v. Acquavella*, No. 77-2-01484-5, Memorandum Opinion: Treaty Reserved Water Rights at Usual and Accustomed Fishing Places (Wash. Super. Ct. Sept. 1, 1994); and *United States v. Adair*, 723 F2d 1394 (9th Cir 1983) (*Adair II*) as support for their position. OWRD addresses each of these cases below.

The Claimants characterize *Arizona*, 376 US at 344-45, as having awarded “reserved water rights from the Colorado River for the Cocopah Reservation, even though the river lies approximately two miles outside reservation boundaries.” Claimants’ Joint Post-Hearing Response Brief at 53 (emphasis in original; internal citations omitted). The Claimants argue that *Arizona* was premised on the Cocopah Reservation being two miles from the Colorado River. On the contrary, the relative locations of the Cocopah Reservation and the Colorado River, and the effect the relative locations might have on an award of water rights, was at not at issue in *Arizona*. The decision does not even mention the relative locations of the Cocopah Reservation and the river. Under these circumstances, the decision could not have been premised on the Colorado River being off the reservation.

As the Claimants acknowledge, the boundaries of the Cocopah Reservation were in dispute, although not in the *Arizona* proceeding, at the time of the *Arizona* decision. A 1972 Opinion of the Solicitor of the Department of the Interior states: “Over the years there have been considerable differences of opinion regarding interpretation of the Executive Order” that created the Cocopah Reservation. Opinions of the Solicitor, page 2051, December 21, 1972 (“1972 Opinion”) (attached hereto as Exhibit A). Specifically, the dispute pertained to whether the Executive Order intended to include lands bordering the Colorado River within the Reservation. *Id.* The 1972 Opinion reversed an earlier opinion issued by the Solicitor of the Interior, and concluded that the “reservation as created by the Executive Order...extended to the Colorado River.” *Id.* at 2052. Given that the issue of awarding reserved water rights in off-reservation bodies of water was not in dispute in *Arizona*, and that the reservation boundaries were uncertain at the time of the *Arizona* decision,⁵ *Arizona* provides no support for the Claimants’ position.

The Claimants next cite to a ruling issued by a federal district court judge in the state of Washington, which was affirmed by the Ninth Circuit Court of Appeals in *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1033-35 (9th Cir. 1985). The district court judge’s ruling required the Yakima Irrigation Project to maintain a certain quantity of water at a location outside of the primary Yakama Reservation boundaries to support the Yakama Nation’s treaty fishing rights. Civ. No. 21, Instructions to the Watermaster (E.D. Wash. Oct. 31, 1980) (attached as Attachment C4 to the Affidavit of David W. Harder in Support of the United States’ and Klamath Tribes’ Memorandum in Support of Joint Motion for Ruling on Legal Issues Defining the Tribal Water Rights, submitted July 8, 2005) (referred to herein as “Instructions to Watermaster”).

⁵ While the view of the United States Department of Interior Solicitor at the time of the *Arizona* decision was that the Colorado River was not on and did not border the Cocopah Reservation, the 1972 Opinion makes clear that the Solicitor’s view at the time of the *Arizona* decision was not universally shared.

The treaty establishing the Yakama Reservation is different from the Klamath Treaty in a critical respect. Unlike the Klamath Treaty, the Yakama treaty reserved fishing rights for the Yakama Nation at “usual and accustomed [fishing] places” outside the primary boundaries of the Yakama Reservation. *Kittitas*, 763 F2d at 1033. In other words, the Yakama hold rights to use land for a specific purpose at locations outside the primary reservation boundaries. The district court ruling specifically states that the reach of river protected by the ruling “is a part of a fishery reserved to the Yakama Indian Nation and its members pursuant to its treaty with the United States...” Instructions to the Watermaster at 2. The water rights affirmed by *Kittitas* are therefore based on a specific, underlying fishing right (a right in land at the “usual and accustomed fishing places”) for which there is no equivalent in the Klamath Treaty.

In addition, the *Kittitas* cases did not involve the adjudication of the Yakama Nation’s federal reserved water rights (or the adjudication of any other water rights). The Ninth Circuit stated specifically that the parties to the proceeding “intended no general adjudication of water rights.” *Kittitas Reclamation Dist. v. Sunnyside Valley Irrigation Dist.*, 763 F2d 1032, 1035 (1985).

Finally, the *Kittitas* cases do not engage in any analysis of the federal reserved water rights doctrine that supports an expansion of the doctrine to include off-reservation water rights at locations that do not constitute “usual and accustomed [fishing] places.” *Kittitas* provides no support for the Claimants’ position.

The Claimants also cite *Washington Dep’t of Ecology v. Acquavella*, No. 77-2-01484-5, Memorandum Opinion: Treaty Reserved Water Rights at Usual and Accustomed Fishing Places (Wash. Super. Ct. Sept. 1, 1994) (OWRD Ex. 2 at 717-731) as having awarded off-reservation water rights. *Acquavella* is a decision of a Washington state superior court, and therefore does not serve as applicable precedent in this proceeding.

Nor does *Acquavella* serve as persuasive authority. *Acquavella* pertains to the treaty establishing the Yakama Reservation, which is different from the Klamath Treaty in a critical respect. Unlike the Klamath Treaty, the Yakama treaty reserved fishing rights for the Yakama Nation at “usual and accustomed [fishing] places” outside the primary boundaries of the Yakama Reservation. OWRD Ex. 2 at 726, 731. In other words, the Yakama hold rights to use land for a specific purpose at locations outside the primary reservation boundaries. The court thus addresses the question of water rights at locations where the Yakama Nation also had treaty fishing rights. *Acquavella* does not engage in any analysis of the federal reserved water rights doctrine that supports an expansion of the doctrine to include off-reservation water rights at locations that do not constitute “usual and accustomed [fishing] places.” *Acquavella* provides no support for the Claimants’ position.

Finally, the Claimants’ cite to language in *United States v. Adair*, 723 F2d 1394 (9th Cir 1983) (*Adair II*), that describes the process for determining the

primary purposes of an Indian reservation, and the canons of Indian treaty interpretation. Reliance on *Adair II* misses the mark. The question posed by the Claimants' off-reservation water right claim is whether the federal reserved water right doctrine is broad enough to permit implied water rights *under any circumstances* at locations geographically unconnected to (i.e., not either bordering or within) a federal reservation of land. If the doctrine is not so broad (and OWRD concludes that it is not), then the purposes of a particular federal reservation, or the documents creating a particular federal reservation, are immaterial.

The Claimants repeatedly cite to portions of *Adair II* that describe the determination of the *purposes* of the reservation. *See, e.g., Adair II*, 723 F2d at 1408, n13. It is in this context, and this context only, that the *Adair II* court treats Indian reservations differently than other federal reservations of land. As the *Adair II* court explained, determination of the purposes of the reservation is based on an interpretation of the treaty creating the reservation. In this context, canons of Indian treaty construction may apply. But the purpose of the reservation is only one element of a federal reserved water right, and it is an element that speaks to the character of the land actually reserved. It does not address the effects of a reservation on far-flung locales. The *Adair II* court's discussion of the purpose of a reservation is therefore inapplicable to the question of off-reservation water rights.

In conclusion, the Claimants' claims for off-reservation water rights are not supported by either the underlying principles of the federal reserved water right doctrine or by the case law. . The off-reservation portions of Claims 647 and 652, and the entirety of Claims 650, 651, 654, 655, 656, and 657 are therefore denied.

Reasons for Modification: To make the Opinion section consistent with the Department's legal conclusions, and to describe the legal reasoning behind certain of the Department's legal conclusions.

11. **Attachment A.** Table 2 in Attachment A to the Proposed Order is modified as follows (additions are shown in underline text; deletions are shown in "~~strikethrough~~" text):

For Claim 650, the following "Riparian Habitat Claim base flow values" are changed as described below:

July 1 – 31: 49 cfs ~~83 cfs~~

August 1 – 31: 32 cfs ~~67 cfs~~

September 1 – 30: 33 cfs ~~73 cfs~~

October 1 – 31: 41 cfs ~~79 cfs~~

November 1 – 30: 67 cfs ~~90 cfs~~

For Claim 651, the following "Riparian Habitat Claim base flow values" are changed as described below:

July 1 – 31: 34 cfs ~~37 cfs~~

August 1 – 31: 22 cfs ~~31 cfs~~

September 1 – 30: 22 cfs ~~32 cfs~~

October 1 – 31: 27 cfs ~~36 cfs~~

For Claim 657, the following “Riparian Habitat Claim base flow values” are changed as described below:

October 1 – 31: 2.0 cfs ~~2.6 cfs~~

November 1 – 30: 3.0 cfs ~~3.1 cfs~~

Reason for Modification: The flow values listed in the Proposed Order are inconsistent with flows listed in the Claimants’ notices of errata. The affected flow values are corrected to correspond with the values listed the Claimants’ notices of errata.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “Procedural History” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted in its entirety.
 - c. The “Expert Testimony” is adopted in its entirety.
 - d. The “Issues” is adopted is adopted in its entirety.
 - e. The “Findings of Fact” is adopted with modifications, as set forth in Section A.7, above.
 - f. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, above.
 - g. The “Opinion” is adopted with modifications, as set forth in Section A.9, above.
 - h. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claims 641 – 649 and 652 - 653. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 and A.10, above, the outcome of the Order has been modified (1) to correct the description of the upper reach boundary for Claim 649, and (2) to recognize rights for Claims 647 and 652 for only those portions of claimed reaches that lie within the former reservation boundary. Claims 650, 651, 654, 655, 656 and 657 are denied because they lie entirely outside of the former reservation boundary
2. Both the United States and the Klamath Tribes filed claims based on the hunting, trapping, fishing and gathering purposes of the Klamath Treaty of 1864. The Klamath Tribes’ Claim 612 incorporates the United States’ claims in this case by reference. The Klamath Tribes’ claims are duplicative of the United States’ claims, not additive. The United States holds the rights recognized herein in trust for the Klamath Tribes. *Colorado River Water Conservation Dist. v. United States*, 424 US 800, 810 (1976). As a result,

Claim 612 is denied. Claim 612 is addressed in a separate Partial Order of Determination for Claim 612, and the United States' Claims 641 – 657 are determined in this Partial Order of Determination for Claims 641 – 657.

3. Based on the file and record herein, IT IS ORDERED that Claims 650, 651, 654, 655, 656, and 657 are denied and are of no force or effect.
4. Based on the file and record herein, IT IS ORDERED that Claims 641 – 649 and 652 – 653 are approved as set forth in the following Water Right Claim Description.

CLAIM NO. 641

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 641, PAGE 15, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 70806)⁶ TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow ^a (CFS)	Conditional Physical Habitat Flow ^b (CFS)
January	169	200
February	169	200
March	169	169
April	169	169
May	180	180
June	180	180
July	140	354
August	140	264
September	140	290
October	140	300
November	140	300
December	169	200

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species existing in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

⁶ References to the Water Availability Basin (WAB) for each claim (641-657) are included solely for OWRD's convenience.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	560	1480	3230
April	851	1480	3230
May	871	1480	3230
June	492	--	--
July	234	--	--
August	174	--	--
September	191	--	--
October	231	--	--
November	250	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM CHILOQUIN DAM TO THE WILLIAMSON RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile ⁷
Upper Reach Boundary	35 S	7 E	WM	3	NE SE	NORTH 40° 30' 34" WEST, 1786.3 FEET FROM SE CORNER	0.9
Lower Reach Boundary	35 S	7 E	WM	3	NW NW	SOUTH 61° 20' 36" EAST, 996.8 FEET FROM NW CORNER	0

⁷ References to the approximate River Mile for the upper and lower reach boundaries of each claim (641-657) are included solely for OWRD's convenience.

CLAIM NO. 642

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 642, PAGE 15, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420268) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	150	150
February	209	209
March	209	209
April	209	209
May	252	252
June	200	200
July	128	200
August	128	150
September	128	150
October	128	150
November	128	150
December	150	150

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	560	1470	3220
April	851	1470	3220
May	871	1470	3220
June	492	--	--
July	234	--	--
August	174	--	--
September	191	--	--
October	231	--	--
November	250	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM BRAYMILL TO CHILOQUIN DAM							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	34 S	8 E	WM	19	NW SE	NORTH 51° 46' 43" WEST, 2422.4 FEET FROM SE CORNER	8.5
Lower Reach Boundary	35 S	7 E	WM	3	NE SE	NORTH 40° 30' 34" WEST, 1786.3 FEET FROM SE CORNER	0.9

CLAIM NO. 643

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 643, PAGES 19-21, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420231) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow ^a (CFS)	Conditional Physical Habitat Flow ^b (CFS)
January	250	250
February	250	250
March	250	250
April	250	250
May	194	194
June	194	194
July	140	300
August	140	272
September	140	294
October	140	300
November	140	300
December	250	250

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	557	1460	3000
April	838	1460	3000
May	891	1460	3000
June	487	--	--
July	227	--	--
August	180	--	--
September	194	--	--
October	225	--	--
November	257	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM UPPER S' OCHOLIS CANYON TO BRAYMILL							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	35 S	9 E	WM	9	NE NE	SOUTH 21° 17' 57" WEST, 916.9 FEET FROM NE CORNER	31.7
Lower Reach Boundary	34 S	8 E	WM	19	NW SE	NORTH 51° 46' 43" WEST, 2422.4 FEET FROM SE CORNER	8.5

CLAIM NO. 644

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 644, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420262) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	57	115
February	57	115
March	57	57
April	57	57
May	67	67
June	67	67
July	85	200
August	85	200
September	85	172
October	85	172
November	85	172
December	57	115

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	491	1370	2980
April	752	1370	2980
May	832	1370	2980
June	426	--	--
July	195	--	--
August	149	--	--
September	161	--	--
October	185	--	--
November	207	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM TROUT CREEK TO S'OCHOLIS CANYON							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	35 S	9 E	WM	36	NE NW	SOUTH 73° 33' 8" EAST, 1524.6 FEET FROM NW CORNER	38.7
Lower Reach Boundary	35 S	9 E	WM	9	NE NE	SOUTH 21° 17' 57" WEST, 916.9 FEET FROM NE CORNER	31.7

CLAIM NO. 645

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 645, PAGES 20-23, MYLAR MAP FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420233) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	353	353
February	450	450
March	450	450
April	450	450
May	450	450
June	450	450
July	291	291
August	222	222
September	241	241
October	275	252
November	306	252
December	337	337

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	479	1370	2800
April	726	1370	2800
May	818	1370	2800
June	413	--	--
July	192	--	--
August	147	--	--
September	159	--	--
October	182	--	--
November	202	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM SYCAN RIVER TO TROUT CREEK							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	36 S	12 E	WM	10	NW SW	NORTH 33° 9' 54" EAST, 1777.7 FEET FROM SW CORNER	71.7
Lower Reach Boundary	35 S	9 E	WM	36	NE NW	SOUTH 73° 33' 8" EAST, 1524.6 FEET FROM NW CORNER	38.7

CLAIM NO. 646

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 646, PAGE 15, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 70804) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	184	184
February	184	184
March	184	184
April	184	184
May	231	231
June	231	231
July	125	183
August	125	132
September	125	147
October	125	171
November	125	180
December	184	184

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	251	958	2010
April	381	958	2010
May	455	958	2010
June	255	--	--
July	121	--	--
August	87	--	--
September	97	--	--
October	113	--	--
November	119	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM USGS GAGE NEAR BEATTY TO SYCAN RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	36 S	12 E	WM	13	NW SE	NORTH 37° 51' 23" WEST, 2647.7 FEET FROM SE CORNER	74.8
Lower Reach Boundary	36 S	12 E	WM	10	NW SW	NORTH 33° 9' 54" EAST, 1777.7 FEET FROM SW CORNER	71.7

CLAIM NO. 647

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 647, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420250) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	68	68
February	68	68
March	68	68
April	68	68
May	169	169
June	169	169
July	80	112
August	80	112
September	80	101
October	80	101
November	80	101
December	68	68

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	240	912	1600
April	366	912	1600
May	444	912	1600
June	249	--	--
July	118	--	--
August	85	--	--
September	95	--	--
October	110	--	--
November	114	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM EAST BOUNDARY OF FORMER KLAMATH INDIAN RESERVATION TO USGS GAGE NEAR BEATTY							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	36 S	13 E	WM	24	SE NE	SOUTH 1° 0' 24" EAST, 1450 FEET FROM NE CORNER	79
Lower Reach Boundary	36 S	12 E	WM	13	NW SE	NORTH 37° 51' 23" WEST, 2647.7 FEET FROM SE CORNER	74.8

CLAIM NO. 648

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 648, PAGE 15, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: TROUT CREEK, tributary to SPRAGUE RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420203) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)
January	1.8
February	3
March	4.1
April	8.3
May	6.4
June	5.5
July	3.1
August	2.7
September	2.7
October	2
November	3
December	3.2

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT FLOWS^b

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	2.7	23	31
April	5.5	23	31
May	6	23	31
June	3.6	--	--
July	2.1	--	--
August	1.7	--	--
September	1.8	--	--
October	1.9	--	--
November	2	--	--
December	--	--	--

^b Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

TROUT CREEK FROM NORTH FORK/SOUTH FORK TROUT CREEK CONFLUENCE TO THE SPRAGUE RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	35 S	9 E	WM	35	SW SW	NORTH 67° 52' 10" EAST, 1226.5 FEET FROM SW CORNER	1.5
Lower Reach Boundary	35 S	9 E	WM	36	NE NW	SOUTH 73° 33' 8" EAST, 1524.6 FEET FROM NW CORNER	0

CLAIM NO. 649

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 649, PAGE 13, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: WHISKY CREEK, tributary to the SPRAGUE RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE
STREAM REACH (OWRD WAB ID# 31420206) TO PROTECT THE FOLLOWING FLOWS
THROUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow ^a (CFS)	Conditional Physical Habitat Flow ^b (CFS)
January	7	7
February	7	7
March	11	11
April	11	11
May	11	11
June	11	11
July	5	5
August	5	5
September	4	4
October	3	3
November	5	5
December	7	7

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	20
April	21
May	22
June	12
July	5
August	5
September	4
October	3
November	5
December	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained.

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WHISKEY CREEK FROM THE SOURCE TO THE SPRAGUE RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	36 S	12 E	WM	30	SE SW	NORTH 81° 35' 59" EAST, 1997.1 FEET FROM SW CORNER	6.3
Lower Reach Boundary	36 S	11 E	WM	12	SE SW	NORTH 49° 48' 28" EAST, 1892.3 FEET FROM SW CORNER	0

CLAIM NO. 652

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 652, PAGE 15, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: FIVE MILE CREEK, tributary to NORTH FORK SPRAGUE RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420222) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	28	28
February	35	35
March	35	35
April	35	35
May	34	34
June	27	27
July	22	22
August	19	19
September	20	20
October	22	22
November	22	22
December	23	23

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	33	209	220
April	38	209	220
May	23	209	220
June	18	--	--
July	14	--	--
August	13	--	--
September	13	--	--
October	14	--	--
November	14	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FIVE MILE CREEK FROM LOWER U. S. FOREST SERVICE BOUNDARY TO THE EAST BOUNDARY OF THE FORMER KLAMATH INDIAN RESERVATION							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	35 S	13 E	WM	25	NW NE	SOUTH 88° 53' 52" WEST, 1673 FEET FROM NE CORNER	8.3
Lower Reach Boundary	36 S	13 E	WM	1	SE SE	NORTH 1° 1' 56" WEST, 272 FEET FROM SE CORNER	0.5

CLAIM NO. 653

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 653, PAGE 15, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: FIVE MILE CREEK, tributary to NORTH FORK SPRAGUE RIVER

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420248) TO PROTECT THE FOLLOWING FLOWS THROUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)	Conditional Physical Habitat Flow^b (CFS)
January	14	14
February	20	20
March	21	21
April	21	21
May	21	21
June	14	19
July	14	18
August	14	18
September	14	18
October	14	18
November	14	17
December	14	14

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 280-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 280-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	24	137	170
April	28	137	170
May	16	137	170
June	14	--	--
July	13	--	--
August	12	--	--
September	13	--	--
October	14	--	--
November	13	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 280-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 280-US-300 at 81-82.)


DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FIVE MILE CREEK FROM THE SOURCE TO THE LOWER U.S. FOREST SERVICE BOUNDARY							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	34 S	13 E	WM	36	SE SE	NORTH 40° 12' 00" WEST, 1705.3 FEET FROM SE CORNER	13.8
Lower Reach Boundary	35 S	13 E	WM	25	NW NE	SOUTH 88° 53' 52" WEST, 1673 FEET FROM NE CORNER	8.3

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication