

**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
UNITED STATES DEPARTMENT OF	)	DETERMINATION
INTERIOR, U.S. FISH AND WILDLIFE	)	
SERVICE	)	
_____	)	Water Right Claims 313-316
		(Lower Klamath NWR)

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 313, 314, 315, and 316 (Claimant: UNITED STATES DEPARTMENT OF INTERIOR, U.S. FISH AND WILDLIFE SERVICE) and their associated contests (Claim 313: 2872, 3228, 3302, 3636, 3996, 4226; 314: 2873, 3229, 3303, 3637, 4227; Claim 315: 2874, 3230, 3304, 3638, 3997, 4228; Claim 316: 2875, 3231, 3305, 3639, 4229) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 274.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a CORRECTED PROPOSED ORDER<sup>1</sup> (Proposed Order) for Claims 313-316 on February 6, 2007.
3. Exceptions were filed to the Corrected Proposed Order by the Klamath Project Water Users (KPWU) and the Fort Klamath and Sprague River Groups within the exceptions filing deadline. Responses to exceptions were timely filed by the United States and KPWU.
4. The exceptions filed to the Corrected Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 313-316. The exceptions are found to be persuasive in part, and therefore,

---

<sup>1</sup> The CORRECTED PROPOSED ORDER replaced a PROPOSED ORDER issued on February 5, 2007. The CORRECTED PROPOSED ORDER was issued to include Attachment 1, Parts A, B, C, and D, which were inadvertently omitted from the original order.

modifications are made to the Corrected Proposed Order as described in Sections A.7, A.8, and A.9, below.

5. The Corrected Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of the Case” is adopted in its entirety.
  - b. The “Issues is adopted with modifications, as set forth in Section A.6, below.
  - c. The “Evidentiary Rulings” is adopted in its entirety.
  - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.7, below.
  - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, below.
  - f. The “Opinion” is adopted with modifications, as set forth in Section A.9, below.
  - g. 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 313-316. The “Order” is presented in a format standardized by OWRD and has not been modified, except to (1) adjust the priority date for Claim 313, (2) clarify that “Station 48” is a measurement point and not a point of diversion, and (3) to describe the Lost River Diversion Channel intake at the Klamath River as a point of diversion.
6. **Issues.** Issue 5 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

**5. Claimant ~~Contestee~~ has provided insufficient evidence of year-round use or need for water to support the primary purpose of the refuge. (KPWU)**

**Reason for Modification:** The Claimant, not the Contestant, is asserting year-round use and has the burden of proof with respect to the need for year-round use.

7. **Findings of Fact.** The Corrected Proposed Order’s “Findings of Fact” section is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding.

a. *Modifications to Finding of Fact 3:*

3) Claim 313, with a claimed priority date of August 8, 1908, is for a parcel of 36,099.6 acres that was originally within the boundaries of Lower Klamath Lake or marshes watered by the lake. (*Id.* at 19.) The claimed acreage includes land that was ceded to the United States by the states of Oregon and California ~~in~~ 1905. (General Laws of Oregon 1905, page 63; Statutes of California 1905, page 4.) By these state “cession laws” the states authorized the United States to lower the level of a number of lakes in the Klamath basin, including Lower or Little

Klamath Lake. ~~and gave title to~~ The “cession laws” quitclaimed to the United States the lands uncovered by the lowering, as of the date the lands were uncovered. (*Id.*) Attachment 1, Part A, attached hereto, describes the property subject to this claim. The claim is for 108,229.4 acre-feet of water per year, 584.4 cubic feet per second (cfs), from four points of diversion located as follows:

- a. Link River Dam, NW ¼ SE ¼, Section 30, T 38 S, R 9 E.W.M.
- b. “A” Canal Headworks, SW ¼ NE ¼, Section 30, T 38 S, R 9 E.W.M.
- c. Ady and Central Canal Diversion at Klamath River, NE ¼ NW ¼, Section 15, T 40 S, R 8 E.W.M.
- d. Station 48 Diversion at Lost River Diversion Channel, NE ¼ NW ¼, Section 31, T 39 S, R 10 E.W.M.

(*Id.* at 78.)

**Reason for Modification:** The Corrected Proposed Order’s finding of fact contained an incorrect interpretation of Oregon and California’s 1905 “cession laws.”

b. *Modifications to Finding of Fact 9:*

9) A diversity of habitat types, including wetland, open water, and agricultural habitats, is required to meet the diverse annual energy and food requirements of these waterfowl. (*Id.* at 14.) In order to establish and maintain this diversity, the Refuge management rotates habitat types among certain Refuge units over time. (*Id.* at 14.) This system is considered an efficient method of maintaining wetland productivity, diversity, and the desired juxtaposition of different serial stages within wetland habitats. (*Id.* at 14-15.) Both to provide an interspersed of emergent plants and open water habitats to wildlife species adapted to this habitat, the Refuge management floods some parts of the Refuge year-round. (*Id.*) ~~The Refuge management plants~~ Under the terms of leases or cooperative agreements, other areas are planted to agricultural habitats, which provide immediate benefits to grain-eating birds and sets the marsh habitat back in succession, thus producing

more seed-producing annual plants. (*Id.* At 15) Due to this rotational management, each habitat type occupies a range of acreage with both the location and total acreage of each habitat type varying over time. (*Id.*)

This wetland management system, utilizing natural successional patterns, is intended to produce ecologically and economically sound results. (*Id.*)

**Reason for Modification:** The portions of the findings of fact modified were not supported by a preponderance of the evidence in the record.

c. *Modifications to Finding of Fact 11:*

11) ~~“The Refuge management applies~~ Water is applied to the Refuge through a system of canals, drains, and diversion structures, in order to maintain the necessary combination of habitats, including seasonally flooded wetlands, permanently flooded wetlands and agricultural croplands. (*Id.* at 13.) The Refuge applies water to seasonal marshes from September through November and stops applying water predominantly in May and June. (*Id.* at 13.) The Refuge management applies water to permanent wetlands year-round or as needed to maintain elevations against seepage and evapotranspiration. This is also necessary to maintain sufficient replacement water to prevent a damaging accumulation of salts. (*Id.*) ~~The Refuge management also applies~~ Water is also applied to agricultural crops at various times, depending on the location and crop type. ~~Management pre-irrigates~~ Grains are pre-irrigated in fall and winter and ~~irrigates~~ hay/pasture are irrigated in winter as well as during spring and summer as needed. (*Id.*)

**Reason for Modification:** The portions of the findings of fact modified were not supported by a preponderance of the evidence in the record.

d. *Modifications to Finding of Fact 18:*

18) Prior to European settlement, Lower Klamath Lake straddled the California and Oregon boundary, and was supplied with water during times of high water by overflow through the Klamath Straits from the Klamath River. (*Id.* at 3-4.) As the level of the river receded in the spring and summer, water would flow back out of

the lake into the Klamath River, until the two reached equilibrium. (*Id.*) Beginning in 1907, control structures, including levies constructed across the Klamath Straits, were constructed. By 1917, these structures had closed off the connection between Lower Klamath Lake and the Klamath River. (*Id.* at 6.) At the same time, the Klamath Reclamation Project, in conjunction with private developers and power companies, built diversion facilities elsewhere on the Klamath River and from upper Klamath Lake. (*Id.* At 10; Ex. 30359.) As a result, although the natural connection between Lower Klamath Lake and the Klamath River has been severed, other works divert water from the Klamath River, and Upper Klamath Lake, to the Refuge, where it is applied to establish the required habitats for birds. (*Id.*; Cross-Examination of Dr. Timothy Mayer, Hearing Record, p.m. at 29:10 *ff.*<sup>2</sup>) In addition, the Lost River Diversion Channel, for example, connects the Upper Klamath Lake with conveys water from the Klamath River to the natural channel of the Lost River, allowing water to pass between the two basins. (Cross-Examination of Dr. Timothy Mayer, Hearing Record, a.m. at 2:12:00 *ff.*) Water is diverted from the Klamath River System to the Lost River system through this diversion channel. (*Id.*) Some of this water flows down the channel of the Lost River into Tule Lake. (*Id.*)

**Reason for Modification:** The portions of the findings of fact modified were not supported by a preponderance of the evidence in the record.

e. *Modifications to Finding of Fact 19:*

19) Beginning in 1941, works were constructed to allow water to be pumped from Tule Lake to the Refuge. (Ex. N23.) At times, this water from the Klamath system is mixed with return flow from upstream irrigators, and with water from the Lost River, perhaps released to Tule Lake during times of high flow. (Cross-Examination of Dr. Timothy Mayer, Hearing Record p.m. at 29:10 *ff.*). Most of these diversion works were constructed and are owned by the United States, and operated by various entities under contracts. (Cross-Examination of Dr. Timothy

---

<sup>2</sup> References to testimony that was digitally recorded at hearing but not transcribed will be cited as “Cross-Examination of [witness’ name], a.m. [or p.m., denoting morning or afternoon session] at [elapsed time since beginning of session].”

Mayer, Hearing Record a.m. at 2:20:00 *ff.*; p.m. at 31:20 *ff.*) Some of these contracts provide for delivery of water for wildlife purposes in Lower Klamath Lake. (Ex. 30041, 30059, 30060.) Others provide for delivery of water to land owned by the United States without limitation as to its use.<sup>3</sup> (Ex. A at 35.)

---

<sup>3</sup> The contract referenced in this sentence pertains to lands within the Tulelake Irrigation District (TID), and outside the boundaries of the Lower Klamath National Wildlife Refuge.

**Reason for Modification:** To make a finding supported by a preponderance of evidence in the record.

f. *Finding of Fact 20 is added as follows:*

20) The appropriate diversion points for Claims 313, 315 and 316 are shown in the following table:

POD Name	Twp	Rng	Mer	Sec	Q-Q
'A' CANAL HEADWORKS	38 S	9 E	WM	30	SW NE
LINK RIVER DAM	38 S	9 E	WM	30	NW SE
LOST RIVER DIVERSION CHANNEL INTAKE AT THE KLAMATH RIVER	39 S	9 E	WM	17	SW NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

The measurement stations for Claims 313, 315 and 316 are shown in the following table:

MEASURING STATION	Twp	Rng	Mer	Sec	Q-Q
STATION 48	39 S	10 E	WM	31	NE NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

The appropriate diversion points for Claim 314 are shown in the following table:

POD Name	Twp	Rng	Mer	Sec	Q-Q
'A' CANAL HEADWORKS	38 S	9 E	WM	30	SW NE
LINK RIVER DAM	38 S	9 E	WM	30	NW SE
LOST RIVER DIVERSION CHANNEL INTAKE AT THE KLAMATH RIVER	39 S	9 E	WM	17	SW NW

The measurement station for Claim 314 is shown in the following table:

MEASURING LOCATION	Twp	Rng	Mer	Sec	Q-Q
STATION 48	39 S	10 E	WM	31	NE NW

**Reason for Additional Finding of Fact:** To make an additional finding supported by a preponderance of evidence in the record.

8. **Conclusions of Law.** The Corrected Proposed Order’s “Conclusions of Law” section is modified as described herein.

a. *Conclusion of Law 3 is replaced in its entirety as follows:*

3. A federal reserved right for the lands subject to Claim 313 was established as of the date the United States acquired the lands.

b. *Conclusion of Law 7 is modified as follows (additions are shown in underlined text; deletions are shown in ~~strikethrough~~ text):*

7. The claims ~~does not~~ rely in part on Exhibits 5-1 and 5-2 from claims 321-324, which, other than certain facilities delivering water for agricultural irrigation, do not pertain to water deliver for Lower Klamath National Wildlife Refuge. (OWRD Ex. 1 at 50-54.)

c. *Conclusion of Law 10 is replaced in its entirety as follows:*

10. Certain of the claimed diversion points may be recognized for the purposes of this Partial Order of Determination. The claimed rates of diversion are appropriate.

d. *Conclusion of Law 12 is replaced in its entirety as follows:*

12. The United States does not have the right under these claims to release or divert water which is stored in Upper Klamath Lake under the authority of other water rights. The United States’ ability to use water previously diverted from storage is subject to the rights for storage and use of water from storage.

e. *Conclusion of Law 13 is replaced in its entirety as follows:*

13. The United States acquired the places of use for each of the claims at different times. The United States presently owns the place of use underlying each claim.

f. *Conclusion of Law 14 is replaced in its entirety as follows:*

14. The United States acquired the places of use for each of the claims at different times. The priority date for each of the claims is the date the land underlying each claim was acquired by the United States.

**Reasons for Modifications:** To make the Conclusions of Law consistent with the Department's legal determinations.

9. **Opinion.** The Proposed Order's "Opinion" section is modified as described herein.

a. *Section 3 of the Opinion is replaced in its entirety as follows:*

**3. A federal reserved right for the lands subject to Claim 313 was established as of the date the United States acquired the lands.**

As described in greater detail in Opinion Section 13, below, the United States had not acquired the lands subject to Claim 313 at the time Executive Order 924 was issued. However, the United States subsequently did acquire the land, and the combination of Executive Orders 924 and 2200 are sufficient to establish a federal reserved water right with a date-of-acquisition priority.

**Reason for Modification:** To make a determination consistent with the findings of fact and legal conclusions.

b. *The first paragraph of Section 6 is modified as follows (additions are shown in underlined text; deletions are shown in strikethrough text):*

~~The underlying task in each case in the Klamath Adjudication is to determine whether a claimant has the right to call upon the watermaster to release water for use by the claimant, and if so, to determine the priority of that claim relative to other users. ORS 539.021; 540.045. ALJ Barber has already established that~~ The United States has the right to call upon the Klamath River and "live," or "natural" flow from Upper Klamath Lake, based on specified priority dates that were the subject of extensive argument.

*The remainder of Section 6 is incorporated without modification.*

**Reason for Modification:** To make a determination consistent with the findings of fact and legal conclusions.



- c. *Section 7 is modified as follows (additions are shown in underlined text; deletions are shown in ~~striketrough~~ text):*

Since this issue was not briefed, it is difficult to discern precisely what was argued. It suffices to state that whatever water may be delivered to the Refuge for uses not connected with wildlife management would not be subject to these claims. ~~In any event, the exhibits noted are not in the evidence.~~

**Reason for Modification:** The referenced exhibits are a part of the evidentiary record. (OWRD Ex. 1 at 99-102.)

- d. *The header for Section 10 and the first two paragraphs in Section 10 are replaced in their entirety. The final paragraph in Section 10 is incorporated without modification.*

**10. Certain of the claimed diversion points may be recognized for the purposes of this Partial Order of Determination. The claimed rates of diversion are appropriate.**

KPWU suggests that the diversion points listed cannot be used for this claim, because they are managed by irrigation districts under contracts that do not give the United States the right to divert water through them except for irrigation. KPWU's objection is not relevant to the determination of the rights claimed. The Klamath Basin Adjudication is limited to a determination of interests in the use of water. The issue raised by KPWU concerns interests in other property: the headgates, pumps, canals and other structures comprising the irrigation works that serve the Klamath Reclamation Project. Disputes over the relative rights of the irrigation entities and the United States to control or operate these works must be heard in another forum. The Adjudication is concerned only with establishing the location of where water is diverted from the claimed sources. The United States has satisfactorily established these points of diversion for Upper Klamath Lake and the Klamath River. Any recognition of these points of diversion in this Partial Order of Determination is not intended to and does not alter in any way the relative rights of the United States and the irrigation entities to control or operate the irrigation works.

It is appropriate to determine the rates of diversion measured at Station 48 and at the ADY/Central Canal diversion intake at the Klamath River. The evidence establishes that the water reaching the Refuge is not necessarily diverted solely for wildlife management purposes. The water is used for irrigation and ultimately reaches the Refuge, where it has wildlife management benefits. It therefore may seem plausible to argue, as KPWU does, that it is inappropriate to set a diversion rate at the identified points of diversion for wildlife management purposes. However, OWRD must consider the possibility that, at some point in the future, the Refuge may be served by transferred point(s) of diversion not connected to the Klamath Reclamation Project's diversion facilities. Setting maximum diversion

rates at Station 48 and at the ADY/Central Canal diversion intake provides reference points by which to judge claims of injury in any future change in point(s) of diversion that the United States might undertake.

**Reasons for Modifications:** To clarify the legal status of diversion works; to clarify the reason for determining a rate of diversion and per-acre limit for a rate of diversion.

e. *Section 12 of the Opinion is replaced in its entirety as follows:*

**12. The United States does not have the right under these claims to divert water which is stored in Upper Klamath Lake under the authority of other water rights. The United States' ability to use water previously diverted from storage is subject to the rights for storage and use of water from storage.**

The issued presented is whether claimant can claim a federal reserved water right to water stored in Upper Klamath Lake. The United States appears not to have claimed a right to store water in Upper Klamath Lake as part of these claims. As a result, no storage right is recognized for these claims. Instead, the United States describes its claim as follows: “[T]he United States does, however, assert that federal reserved water rights may be satisfied with water that has been previously stored.” United States’ Response to KPWU’s Request for Leave to File Surreply, and Surreply to United States’ Posthearing Reply Memorandum at 3. The United States further describes this asserted right as “the right to use stored water delivered or available to the Lower Klamath Refuge as either direct release from storage or as return flow after release from storage and use for irrigation.” *Id.*

As described, this is not a claim to a storage right. It is a claim to use water that has been stored under another water user’s storage right. The United States’ envisions two scenarios where it believes it is entitled to use such water. First, the United States asserts a right to “direct release[s] from storage.” We assume that this refers to water that is released from storage by the storage right holder without any intent to use it. This is abandoned water, and is akin to “natural” or “live” flow in that it may be diverted by any water user according to the user’s right and the prior appropriation system.

Second, the United States asserts a right to “return flow after release from storage and use for irrigation.” Under Oregon law, return flows within the boundary of a federal reclamation project remain available for re-use for project purposes within the boundary of the project. *Cleaver v. Judd*, 238 Or 266, 271 (1964). This water has not yet been “abandoned” by the project and as such is not available for use by other water users. However, due to the mechanics of the Klamath Reclamation Project, project return flows may end up on the claimed place of use. To the extent that this water remains within the boundary of the Klamath Reclamation Project and the Klamath Reclamation Project has not “abandoned” its intent to use this specific water, the United States has a privilege, but not a right to use this water for refuge purposes. To the extent that the Klamath Reclamation Project needs this water for Project purposes, the United

States' use for refuge purposes under this claim may not interfere with the Project's use.

**Reasons for Modifications:** To clarify the rights of the Claimant with respect to water stored in Upper Klamath Lake.

f. *Section 13 of the Opinion is replaced in its entirety as follows:*

**13. The United States acquired the places of use for each of the claims at different times. The United States presently owns the place of use underlying each claim.**

It is a fundamental principle of the federal reserved water right doctrine that federal reserved water rights may only be implied for the benefit of lands owned by the United States. *See, e.g., United States v. Cappaert*, 426 US 128, 138 (1976). The United States must therefore establish, by a preponderance of the evidence that it owns the lands. The priority date for any federal reserved water rights established cannot be earlier than the date the United States acquired the property.<sup>4</sup> *United States v. Anderson*, 736 F2d 1358, 1363 (1984).

The ownership history and appropriate priority date for each claim is addressed in turn.

The United States asserts an August 8, 1908 priority date for the Claim 313 lands, based on Executive Order 924. This order clearly reserved some portion of the claimed land as a refuge and breeding ground for wild birds. But the order appears to have been limited to "islands situated in Lower Klamath Lake" and certain "marsh and swamp lands unsuitable for agriculture." President Woodrow Wilson clarified the reserved lands in Executive Order 2200, issued on May 14, 1915, which includes all of the lands subject to Claim 313.

In 1905, both Oregon and California enacted laws that authorized the United States to lower the levels of certain lakes in the Klamath Basin, including Lower Klamath Lake, and quitclaimed the states' interests in the uncovered lands. The statutes are essentially identical.

---

<sup>4</sup> The ALJ's Order on Motion for Ruling on Legal Issues, which is incorporated by reference into the Corrected Proposed Order, suggests that a federal reserved water right for land acquired *after* the date of an action by the federal government purporting to reserve that same land might have a priority date that relates back to the date of the purported reservation. To the extent that the ALJ did indeed rule on this issue, it is incorrect. The only support for the conclusion comes from Executive Order 8647, which was at issue in *Arizona v. California*, 373 U.S. 546 (1963), 376 U.S. 340, 346 (1964). Executive Order 8647 refers to a reservation of existing federal lands and "lands to be acquired." *Arizona* addresses a number of federal reserved water right issues. *Arizona* does not, however, make any mention of the "lands to be acquired" in Executive Order 8647, and there is no evidence that the status of these lands or their relationship to the federal reserved water right doctrine was at issue or given any consideration by the court. In addition, the ALJ's conclusion is squarely at odds with *United States v. Anderson*, which holds that the priority date for federal reserved water rights benefitting land acquired by the United States is the date of acquisition.

The section of the Oregon statute relevant to ownership of the uncovered lake beds reads:

That there is to be and hereby is ceded to the United States all the right, title, interest, or claim of this State to any land uncovered by the lowering of the water levels, or by the drainage of any or all of said lakes not already disposed of by the State; and the lands hereby ceded may be disposed of by the United States....

General Laws of Oregon 1905, page 63. An Oregon Attorney General Opinion concludes that Oregon's 1905 act "contains a 'condition precedent' which causes the transfer of any land to be contingent upon the land first being 'uncovered' as a result of reclamation." 45 Or Op Atty Gen 14, at 7-8 (1985). The reasoning behind the conclusion is as follows:

Although the Act is written in the present tense, we do not construe the Act as resulting in an immediate transfer of lands to the federal government. In making this determination, we rely upon the express limitation of the Act to "any land uncovered by the lowering of the water levels, or by the drainage of any or all of said lakes not already disposed of by the State." By these words, the cession of any land to the United States is made to depend upon the future and uncertain event of the lands being actually uncovered as a result of reclamation activities. Indeed, the underlying purpose of the Act was to authorize the federal government to begin such activities. Whether or not any particular lands would be uncovered by the project could not have been known in 1905.

*Id.* At 8. The Opinion's reasoning is sound. There is no reason to depart from it here. In addition, because the California act's language is not meaningfully different in this context, the same approach applies to both the Oregon and the California lands within the Refuge. Statutes of California 1905, page 4. The United States did not acquire any of the Lower Klamath Lake bed until those lands were actually uncovered.

Because the priority date for Claim 313 is based on the date the United States acquired the claimed lands, it is necessary to determine when the claimed lands were uncovered.

In 1907 the United States entered into an agreement with two railroad companies to construct a railroad embankment crossing the Klamath Straits. The embankment functions as a levee. The embankment included controlling works at the Klamath Straits, which regulated the passage of water through the Straits to and from the Klamath River and Lower Klamath Lake. Affidavit and Testimony of Dr. Timothy Mayer at 6. There is no evidence that the level of Lower Klamath Lake was lowered at this time. Instead, the lowering of the Lake level began in 1917, after a contract was entered into between the Klamath Drainage District and the United States, whereby the United States agreed to permanently close the controlling works at the Klamath Straits. *Id.* After closure of the controlling

works, the Lake began to dry due to evaporation. Affidavit and Testimony of Dr. David M. Mauser at 10. Lower Klamath Lake was completely dry by 1925. Affidavit and Testimony of Dr. Timothy Mayer at 7. The priority date for Claim 313 is therefore December 31, 1925. While it is certainly possible that the lands subject to Claim 313 were uncovered sometime between 1917 and the end of 1925, the burden of proving ownership of the subject lands rests with the United States, and the evidence in the record is not substantial enough to establish an earlier date.

Claim 314 concerns land that is described as “public lands” in Public Law 88-567. OWRD Ex. 1 at 285. Based on the language in Public Law 88-567, and in the absence of any contradictory evidence or competing claims to ownership, it is more likely than not that the United States owned the land subject to Claim 314 at the time of its reservation (September 2, 1964).

Claims 315 and 316 concern lands that were acquired from private ownership, and are entitled to water rights with priorities as of the date of acquisition.

**Reasons for Modifications:** To clarify the ownership status of the lands subject to each of the United States claims, consistent with the findings of fact and legal conclusions.

*g. The header and text of Section 14 are replaced in their entirety with the following:*

**14. The priority dates for each of the claims is based on the date the land subject to each claim was acquired by the United States.**

This issue is fully addressed by Section 13, above.

**Reasons for Modifications:** To clarify the ownership status of the lands subject to each of the United States claims, consistent with the findings of fact and legal conclusions.

## **B. DETERMINATION**

1. The Corrected Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of the Case” is adopted in its entirety.
  - b. The “Issues” is adopted with modifications, as set forth in Section A.6, above.
  - c. The “Evidentiary Rulings” is adopted in its entirety.
  - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.7, above.
  - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, above.
  - f. The “Opinion” is adopted with modifications, as set forth in Section A.9, above.
  - g. 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 313-316. The “Order” is presented in a format standardized by OWRD and has not been modified, except to (1) adjust the priority date for Claim 313, (2) clarify that “Station 48” is a

measurement point and not a point of diversion, and (3) to describe the Lost River Diversion Channel intake at the Klamath River as a point of diversion.

2. The combination of Executive Orders 924, 2200, the Kuchel Act, Pub.L.No.88-567, 78 Stat. 850-51 (1964), and the Migratory Bird Conservation Act, 16 USC 715 *et seq.*, are valid bases for this federal reserved water right claim, including the claimed purposes of use. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING ACQUIRED LANDS are incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claims 313-316 are approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 313**

FOR A VESTED WATER RIGHT

**CLAIMANT:** UNITED STATES DEPARTMENT OF INTERIOR,  
U.S. FISH AND WILDLIFE SERVICE  
911 NE 11TH AVE  
PORTLAND OR 97232

**CLAIM MAP REFERENCE:**

OWRD INVESTIGATION MAPS – T 38 S, R 9 E; T 39 S, R 9 E, T 39 S, R 10 E; T 40 S, R 8 E; T 41 S, R 8 E; T 41 S, R 9 E; W.M.

US-F&W 1997 MYLAR SUPPLEMENTAL MAP – T 47 N, R 2 E; T 47 N, R 3 E; T 48 N, R 1 E; T 48 N, R 2 E; T 48 N, R 3 E; M.D.M.

**SOURCES OF WATER:**

UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER, and  
The KLAMATH RIVER, tributary to the PACIFIC OCEAN

**PURPOSE OR USE:**

TO PROVIDE A PRESERVE AND BREEDING GROUND FRO THE PROTECTION OF  
NATIVE BIRDS AND THEIR HABITAT

**VOLUME AND RATE OF USE:**

108,229.4 ACRE-FEET PER YEAR MEASURED AT THE PLACE OF USE, NOT TO EXCEED A RATE OF 584.4 CFS, BEING UP TO 300.0 CFS MEASURED AT STATION 48, AND UP TO 284.4 CFS MEASURED AT THE ADY/CENTRAL CANAL DIVERSION AT KLAMATH RIVER, EACH LOCATED AS FOLLOWS:

MEASURING STATION	Twp	Rng	Mer	Sec	Q-Q
STATION 48	39 S	10 E	WM	31	NE NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

**PERIOD OF ALLOWED USE:** JANUARY 1 - DECEMBER 31

**DATE OF PRIORITY:** DECEMBER 31, 1925

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q
'A' CANAL HEADWORKS	38 S	9 E	WM	30	SW NE
LINK RIVER DAM	38 S	9 E	WM	30	NW SE
LOST RIVER DIVERSION CHANNEL INTAKE AT THE KLAMATH RIVER	39 S	9 E	WM	17	SW NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
41 S	8 E	WM	1	NE NE	1
41 S	8 E	WM	1	NW NE	2
41 S	8 E	WM	1	SW NE	3
41 S	8 E	WM	1	SE NE	4
41 S	8 E	WM	1	NE SE	5
41 S	8 E	WM	1	NW SE	6
41 S	8 E	WM	1	SW SE	7
41 S	8 E	WM	1	SE SE	8
41 S	8 E	WM	11	SW SW	
41 S	8 E	WM	12	NE NE	1
41 S	8 E	WM	12	NW NE	2
41 S	8 E	WM	12	SW NE	3
41 S	8 E	WM	12	SE NE	4
41 S	8 E	WM	12	NE SE	5
41 S	8 E	WM	12	NW SE	6
41 S	8 E	WM	12	SW SE	7
41 S	8 E	WM	12	SE SE	8
41 S	8 E	WM	13	NE NE	1
41 S	8 E	WM	13	NW NE	2
41 S	8 E	WM	13	SW NE	5
41 S	8 E	WM	13	SE NE	6
41 S	8 E	WM	14	NW NW	
41 S	9 E	WM	3	NE NW	1
41 S	9 E	WM	3	NW NW	2
41 S	9 E	WM	3	SW NW	3
41 S	9 E	WM	3	SE NW	4
41 S	9 E	WM	3	NE SW	6
41 S	9 E	WM	3	NW SW	7
41 S	9 E	WM	3	SW SW	8
41 S	9 E	WM	3	SE SW	9
41 S	9 E	WM	3	NW SE	5
41 S	9 E	WM	3	SW SE	10
41 S	9 E	WM	4	NE NE	1
41 S	9 E	WM	4	NW NE	2
41 S	9 E	WM	4	SW NE	7
41 S	9 E	WM	4	SE NE	8

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
41 S	9 E	WM	4	NE NW	3
41 S	9 E	WM	4	NW NW	4
41 S	9 E	WM	4	SW NW	5
41 S	9 E	WM	4	SE NW	6
41 S	9 E	WM	4	NE SW	11
41 S	9 E	WM	4	NW SW	12
41 S	9 E	WM	4	SW SW	13
41 S	9 E	WM	4	SE SW	14
41 S	9 E	WM	4	NE SE	9
41 S	9 E	WM	4	NW SE	10
41 S	9 E	WM	4	SW SE	15
41 S	9 E	WM	4	SE SE	16
41 S	9 E	WM	5	NE NE	1
41 S	9 E	WM	5	SW NE	4
41 S	9 E	WM	5	SE NE	5
41 S	9 E	WM	5	SW NW	2
41 S	9 E	WM	5	SE NW	3
41 S	9 E	WM	5	NE SW	8
41 S	9 E	WM	5	NE SE	6
41 S	9 E	WM	5	NW SE	7
41 S	9 E	WM	5	SW SE	9
41 S	9 E	WM	5	SE SE	10
41 S	9 E	WM	6	NE NE	1
41 S	9 E	WM	6	NW NE	2
41 S	9 E	WM	6	SW NE	7
41 S	9 E	WM	6	SE NE	8
41 S	9 E	WM	6	NE NW	3
41 S	9 E	WM	6	NW NW	4
41 S	9 E	WM	6	SW NW	5
41 S	9 E	WM	6	SE NW	6
41 S	9 E	WM	6	NW SW	9
41 S	9 E	WM	8	NE NE	1
41 S	9 E	WM	8	NW NE	2
41 S	9 E	WM	8	SW NE	5
41 S	9 E	WM	8	SE NE	6
41 S	9 E	WM	8	SW NW	3
41 S	9 E	WM	8	SE NW	4
41 S	9 E	WM	8	NE SW	9
41 S	9 E	WM	8	NW SW	10
41 S	9 E	WM	8	SW SW	11
41 S	9 E	WM	8	SE SW	12
41 S	9 E	WM	8	NE SE	7
41 S	9 E	WM	8	NW SE	8
41 S	9 E	WM	8	SW SE	13
41 S	9 E	WM	8	SE SE	14
41 S	9 E	WM	9	NE NE	1
41 S	9 E	WM	9	NW NE	2
41 S	9 E	WM	9	SW NE	7
41 S	9 E	WM	9	SE NE	8
41 S	9 E	WM	9	NE NW	3
41 S	9 E	WM	9	NW NW	4



LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
41 S	9 E	WM	9	SW NW	5
41 S	9 E	WM	9	SE NW	6
41 S	9 E	WM	9	NE SW	11
41 S	9 E	WM	9	NW SW	12
41 S	9 E	WM	9	SW SW	13
41 S	9 E	WM	9	SE SW	14
41 S	9 E	WM	9	NE SE	9
41 S	9 E	WM	9	NW SE	10
41 S	9 E	WM	9	SW SE	15
41 S	9 E	WM	9	SE SE	16
41 S	9 E	WM	10	NE NE	1
41 S	9 E	WM	10	NW NE	2
41 S	9 E	WM	10	SW NE	7
41 S	9 E	WM	10	SE NE	8
41 S	9 E	WM	10	NE NW	3
41 S	9 E	WM	10	NW NW	4
41 S	9 E	WM	10	SW NW	5
41 S	9 E	WM	10	SE NW	6
41 S	9 E	WM	10	NE SW	11
41 S	9 E	WM	10	NW SW	12
41 S	9 E	WM	10	SW SW	13
41 S	9 E	WM	10	SE SW	14
41 S	9 E	WM	10	NE SE	9
41 S	9 E	WM	10	NW SE	10
41 S	9 E	WM	10	SW SE	15
41 S	9 E	WM	10	SE SE	16
41 S	9 E	WM	14	NE NE	
41 S	9 E	WM	14	NW NE	
41 S	9 E	WM	14	SW NE	
41 S	9 E	WM	14	SE NE	
41 S	9 E	WM	14	NE NW	
41 S	9 E	WM	14	NW NW	
41 S	9 E	WM	14	SW NW	
41 S	9 E	WM	14	SE NW	
41 S	9 E	WM	14	NE SW	7
41 S	9 E	WM	14	SW SW	8
41 S	9 E	WM	14	NE SE	5
41 S	9 E	WM	14	NW SE	6
41 S	9 E	WM	15	NE NE	5
41 S	9 E	WM	15	NW NE	6
41 S	9 E	WM	15	SW NE	11
41 S	9 E	WM	15	SE NE	12
41 S	9 E	WM	15	NE NW	7
41 S	9 E	WM	15	NW NW	8
41 S	9 E	WM	15	SW NW	9
41 S	9 E	WM	15	SE NW	10
41 S	9 E	WM	15	NE SW	15
41 S	9 E	WM	15	NW SW	16
41 S	9 E	WM	15	NE SE	13
41 S	9 E	WM	15	NW SE	14
41 S	9 E	WM	16	NE NE	5

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
41 S	9 E	WM	16	NW NE	6
41 S	9 E	WM	16	SW NE	11
41 S	9 E	WM	16	SE NE	12
41 S	9 E	WM	16	NE NW	7
41 S	9 E	WM	16	NW NW	8
41 S	9 E	WM	16	SW NW	9
41 S	9 E	WM	16	SE NW	10
41 S	9 E	WM	16	NE SW	15
41 S	9 E	WM	16	NW SW	16
41 S	9 E	WM	16	NE SE	13
41 S	9 E	WM	16	NW SE	14
41 S	9 E	WM	17	NE NE	5
41 S	9 E	WM	17	NW NE	6
41 S	9 E	WM	17	SW NE	11
41 S	9 E	WM	17	SE NE	12
41 S	9 E	WM	17	NE NW	7
41 S	9 E	WM	17	NW NW	8
41 S	9 E	WM	17	SW NW	9
41 S	9 E	WM	17	SE NW	10
41 S	9 E	WM	17	NE SW	15
41 S	9 E	WM	17	NW SW	16
41 S	9 E	WM	17	NE SE	13
41 S	9 E	WM	17	NW SE	14
41 S	9 E	WM	18	NE NE	5
41 S	9 E	WM	18	NW NE	6
41 S	9 E	WM	18	SW NE	11
41 S	9 E	WM	18	SE NE	12
41 S	9 E	WM	18	NE NW	7
41 S	9 E	WM	18	NW NW	8
41 S	9 E	WM	18	SW NW	9
41 S	9 E	WM	18	SE NW	10
41 S	9 E	WM	18	NE SW	15
41 S	9 E	WM	18	NW SW	16
41 S	9 E	WM	18	NE SE	13
41 S	9 E	WM	18	NW SE	14
47 N	2 E	MDM	Unsurveyed	UNIT 5B	
47 N	2 E	MDM	Unsurveyed	UNIT 6A	
47 N	2 E	MDM	Unsurveyed	UNIT 6B2	
47 N	2 E	MDM	Unsurveyed	UNIT 6C	
47 N	2 E	MDM	Unsurveyed	UNIT 7A	
47 N	2 E	MDM	Unsurveyed	UNIT 7B	
47 N	2 E	MDM	Unsurveyed	UNIT 10B	
47 N	2 E	MDM	Unsurveyed	UNIT 10C	
47 N	2 E	MDM	Unsurveyed	UNIT 11AN	
47 N	2 E	MDM	Unsurveyed	UNIT 11AS	
47 N	2 E	MDM	Unsurveyed	UNIT 11B	
47 N	2 E	MDM	Unsurveyed	UNIT 11C	
47 N	2 E	MDM	Unsurveyed	UNIT 13A	
47 N	2 E	MDM	Unsurveyed	UNIT 13B	
47 N	2 E	MDM	4	NW NE	2
47 N	2 E	MDM	4	SW NE	

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
47 N	2 E	MDM	4	NE NW	3
47 N	2 E	MDM	4	NW NW	4
47 N	2 E	MDM	4	SW NW	
47 N	2 E	MDM	4	SE NW	
47 N	2 E	MDM	4	NE SW	
47 N	2 E	MDM	4	NW SW	
47 N	2 E	MDM	4	SW SW	
47 N	2 E	MDM	4	SE SW	
47 N	2 E	MDM	4	NW SE	
47 N	2 E	MDM	4	SW SE	
47 N	2 E	MDM	5	NE NE	1
47 N	2 E	MDM	5	NW NE	2
47 N	2 E	MDM	5	SW NE	
47 N	2 E	MDM	5	SE NE	
47 N	2 E	MDM	5	NE NW	3
47 N	2 E	MDM	5	NW NW	4
47 N	2 E	MDM	5	SW NW	
47 N	2 E	MDM	5	SE NW	
47 N	2 E	MDM	5	NE SW	
47 N	2 E	MDM	5	NW SW	
47 N	2 E	MDM	5	SW SW	
47 N	2 E	MDM	5	SE SW	
47 N	2 E	MDM	5	NE SE	
47 N	2 E	MDM	5	NW SE	
47 N	2 E	MDM	5	SW SE	
47 N	2 E	MDM	5	SE SE	
47 N	2 E	MDM	6	NE NE	1
47 N	2 E	MDM	6	NW NE	2
47 N	2 E	MDM	6	SW NE	
47 N	2 E	MDM	6	SE NE	
47 N	2 E	MDM	6	NE NW	3
47 N	2 E	MDM	6	SE NW	
47 N	2 E	MDM	6	NE SW	
47 N	2 E	MDM	6	SE SW	
47 N	2 E	MDM	6	NE SE	
47 N	2 E	MDM	6	NW SE	
47 N	2 E	MDM	6	SW SE	
47 N	2 E	MDM	6	SE SE	
47 N	2 E	MDM	7	NE NE	
47 N	2 E	MDM	7	NW NE	
47 N	2 E	MDM	7	SW NE	
47 N	2 E	MDM	7	SE NE	
47 N	2 E	MDM	7	NE NW	
47 N	2 E	MDM	7	SE NW	
47 N	2 E	MDM	8	NE NE	
47 N	2 E	MDM	8	NW NE	
47 N	2 E	MDM	8	SW NE	
47 N	2 E	MDM	8	SE NE	
47 N	2 E	MDM	8	NE NW	
47 N	2 E	MDM	8	NW NW	
47 N	2 E	MDM	8	SW NW	

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
47 N	2 E	MDM	8	SE NW	
47 N	2 E	MDM	9	NW NE	
47 N	2 E	MDM	9	SW NE	
47 N	2 E	MDM	9	SE NE	
47 N	2 E	MDM	9	NE NW	
47 N	2 E	MDM	9	NW NW	
47 N	2 E	MDM	9	SW NW	
47 N	2 E	MDM	9	SE NW	
47 N	2 E	MDM	9	NE SE	
47 N	2 E	MDM	9	NW SE	
47 N	2 E	MDM	10	SW SW	
47 N	3 E	MDM	Unsurveyed	UNIT 4C	
47 N	3 E	MDM	Unsurveyed	UNIT 7A	
47 N	3 E	MDM	Unsurveyed	UNIT 7B	
47 N	3 E	MDM	Unsurveyed	UNIT 8B	
47 N	3 E	MDM	Unsurveyed	UNIT 9A	
47 N	3 E	MDM	Unsurveyed	UNIT 9B	
47 N	3 E	MDM	Unsurveyed	UNIT 11B	
47 N	3 E	MDM	Unsurveyed	UNIT 11C	
47 N	3 E	MDM	Unsurveyed	UNIT 12A	
47 N	3 E	MDM	Unsurveyed	UNIT 12B	
47 N	3 E	MDM	Unsurveyed	UNIT 12C	
47 N	3 E	MDM	Unsurveyed	UNIT 13A	
47 N	3 E	MDM	Unsurveyed	UNIT 13B	
47 N	3 E	MDM	4		1
47 N	3 E	MDM	4	NW NW	2
47 N	3 E	MDM	4	SW NW	3
47 N	3 E	MDM	4	SE NW	4
47 N	3 E	MDM	4	NE SW	5
47 N	3 E	MDM	4	NW SW	6
47 N	3 E	MDM	4	SW SW	7
47 N	3 E	MDM	4	SE SW	8
47 N	3 E	MDM	5	NE NE	1
47 N	3 E	MDM	5	NW NE	2
47 N	3 E	MDM	5	SW NE	
47 N	3 E	MDM	5	SE NE	
47 N	3 E	MDM	5	NE NW	3
47 N	3 E	MDM	5	NE SE	
47 N	3 E	MDM	5	SE SE	
47 N	3 E	MDM	8	NE NE	
47 N	3 E	MDM	8	SE NE	
47 N	3 E	MDM	9		1
47 N	3 E	MDM	9	SW NW	2
47 N	3 E	MDM	9	NW SW	3
47 N	3 E	MDM	9	SW SW	4
47 N	3 E	MDM	16	NW NW	1
48 N	1 E	MDM	Unsurveyed	UNIT 2	
48 N	1 E	MDM	22	NE SE	6
48 N	1 E	MDM	22	SE SE	11
48 N	1 E	MDM	23	NE NE	1
48 N	1 E	MDM	23	NW NE	

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
48 N	1 E	MDM	23	SW NE	
48 N	1 E	MDM	23	SE NE	2
48 N	1 E	MDM	23	NE NW	
48 N	1 E	MDM	23	NW NW	
48 N	1 E	MDM	23	SW NW	
48 N	1 E	MDM	23	SE NW	
48 N	1 E	MDM	23	NE SW	
48 N	1 E	MDM	23	NW SW	
48 N	1 E	MDM	23	SW SW	
48 N	1 E	MDM	23	SE SW	
48 N	1 E	MDM	23	NE SE	3
48 N	1 E	MDM	23	NW SE	
48 N	1 E	MDM	23	SW SE	
48 N	1 E	MDM	23	SE SE	
48 N	1 E	MDM	24	SW SW	3
48 N	1 E	MDM	24	SE SW	2
48 N	1 E	MDM	24	SW SE	1
48 N	1 E	MDM	25	NW NE	5
48 N	1 E	MDM	25	SW NE	6
48 N	1 E	MDM	25	NE NW	
48 N	1 E	MDM	25	NW NW	
48 N	1 E	MDM	25	SW NW	
48 N	1 E	MDM	25	SE NW	
48 N	1 E	MDM	25	NE SE	8
48 N	1 E	MDM	26	NE NE	
48 N	1 E	MDM	26	NW NE	
48 N	1 E	MDM	26	SW NE	
48 N	1 E	MDM	26	SE NE	
48 N	1 E	MDM	26	NE NW	7
48 N	1 E	MDM	26	NW NW	8
48 N	1 E	MDM	26	SE NW	10
48 N	2 E	MDM	Unsurveyed	UNIT 1	
48 N	2 E	MDM	Unsurveyed	UNIT 2	
48 N	2 E	MDM	Unsurveyed	UNIT 3A	
48 N	2 E	MDM	Unsurveyed	UNIT 3B1	
48 N	2 E	MDM	Unsurveyed	UNIT 3B2	
48 N	2 E	MDM	Unsurveyed	UNIT 3B3	
48 N	2 E	MDM	Unsurveyed	UNIT 4A	
48 N	2 E	MDM	Unsurveyed	UNIT 4B	
48 N	2 E	MDM	Unsurveyed	UNIT 4C	
48 N	2 E	MDM	Unsurveyed	UNIT 5B	
48 N	2 E	MDM	Unsurveyed	UNIT 6A	
48 N	2 E	MDM	Unsurveyed	UNIT 6B1	
48 N	2 E	MDM	Unsurveyed	UNIT 6B2	
48 N	2 E	MDM	Unsurveyed	UNIT 6C	
48 N	2 E	MDM	Unsurveyed	UNIT 7A	
48 N	2 E	MDM	Unsurveyed	UNIT 7B	
48 N	2 E	MDM	13	NE SW	3
48 N	2 E	MDM	13	NW SW	4
48 N	2 E	MDM	13	SW SW	
48 N	2 E	MDM	13	SE SW	

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
48 N	2 E	MDM	13	NE SE	1
48 N	2 E	MDM	13	NW SE	2
48 N	2 E	MDM	13	SW SE	
48 N	2 E	MDM	13	SE SE	
48 N	2 E	MDM	14	NW SE	2
48 N	2 E	MDM	14	SE SE	
48 N	2 E	MDM	23	NE NE	
48 N	2 E	MDM	24	NE NE	
48 N	2 E	MDM	24	NW NE	
48 N	2 E	MDM	24	SW NE	
48 N	2 E	MDM	24	SE NE	
48 N	2 E	MDM	24	NE NW	
48 N	2 E	MDM	24	NW NW	
48 N	2 E	MDM	24	SE NW	
48 N	2 E	MDM	24	NE SW	
48 N	2 E	MDM	24	NE SE	
48 N	2 E	MDM	24	NW SE	
48 N	2 E	MDM	24	SW SE	
48 N	2 E	MDM	24	SE SE	
48 N	2 E	MDM	25	NE NE	
48 N	2 E	MDM	28	SW NW	
48 N	2 E	MDM	28	SE NW	
48 N	2 E	MDM	28	NE SW	
48 N	2 E	MDM	28	NW SW	
48 N	2 E	MDM	28	SW SW	
48 N	2 E	MDM	28	SE SW	
48 N	2 E	MDM	28	NW SE	
48 N	2 E	MDM	28	SW SE	
48 N	2 E	MDM	29	SE NE	
48 N	2 E	MDM	29	SE SW	
48 N	2 E	MDM	29	NE SE	
48 N	2 E	MDM	29	NW SE	
48 N	2 E	MDM	29	SW SE	
48 N	2 E	MDM	29	SE SE	
48 N	2 E	MDM	30	SW SW	1
48 N	2 E	MDM	31	NE NW	1
48 N	2 E	MDM	31	NE SW	
48 N	2 E	MDM	31	SE SW	
48 N	2 E	MDM	31	SW SE	
48 N	2 E	MDM	31	SE SE	
48 N	2 E	MDM	32	NE NE	
48 N	2 E	MDM	32	NW NE	
48 N	2 E	MDM	32	SW NE	
48 N	2 E	MDM	32	SE NE	
48 N	2 E	MDM	32	NE NW	
48 N	2 E	MDM	32	SE NW	
48 N	2 E	MDM	32	NE SW	
48 N	2 E	MDM	32	SW SW	
48 N	2 E	MDM	32	SE SW	
48 N	2 E	MDM	32	NE SE	
48 N	2 E	MDM	32	NW SE	

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
48 N	2 E	MDM	32	SW SE	
48 N	2 E	MDM	32	SE SE	
48 N	2 E	MDM	33	NW NE	
48 N	2 E	MDM	33	SW NE	
48 N	2 E	MDM	33	NE NW	
48 N	2 E	MDM	33	NW NW	
48 N	2 E	MDM	33	SW NW	
48 N	2 E	MDM	33	SE NW	
48 N	2 E	MDM	33	NE SW	
48 N	2 E	MDM	33	NW SW	
48 N	2 E	MDM	33	SW SW	
48 N	2 E	MDM	33	SE SW	
48 N	2 E	MDM	33	NW SE	
48 N	2 E	MDM	33	SW SE	
48 N	3 E	MDM	Unsurveyed	UNIT 4A	
48 N	3 E	MDM	Unsurveyed	UNIT 4C	
48 N	3 E	MDM	Unsurveyed	UNIT 4D	
48 N	3 E	MDM	Unsurveyed	UNIT 4E	
48 N	3 E	MDM	Unsurveyed	UNIT 4F	
48 N	3 E	MDM	Unsurveyed	UNIT 7A	
48 N	3 E	MDM	Unsurveyed	UNIT 7B	
48 N	3 E	MDM	Unsurveyed	UNIT 8A	
48 N	3 E	MDM	Unsurveyed	UNIT 8B	
48 N	3 E	MDM	18		1
48 N	3 E	MDM	19	SW NE	3
48 N	3 E	MDM	19	NE NW	1
48 N	3 E	MDM	19	NW NW	
48 N	3 E	MDM	19	SW NW	
48 N	3 E	MDM	19	SE NW	2
48 N	3 E	MDM	19	NE SW	
48 N	3 E	MDM	19	NW SW	
48 N	3 E	MDM	19	SW SW	
48 N	3 E	MDM	19	SE SW	
48 N	3 E	MDM	19	NE SE	5
48 N	3 E	MDM	19	NW SE	4
48 N	3 E	MDM	19	SW SE	
48 N	3 E	MDM	19	SE SE	6
48 N	3 E	MDM	29		1
48 N	3 E	MDM	29	SW NW	2
48 N	3 E	MDM	29	SE NW	3
48 N	3 E	MDM	29	NE SW	5
48 N	3 E	MDM	29	NW SW	6
48 N	3 E	MDM	29	SW SW	7
48 N	3 E	MDM	29	SE SW	
48 N	3 E	MDM	29	NW SE	4
48 N	3 E	MDM	29	SW SE	8
48 N	3 E	MDM	29	SE SE	9
48 N	3 E	MDM	30	NE NE	1
48 N	3 E	MDM	30	NW NE	2
48 N	3 E	MDM	30	SW NE	
48 N	3 E	MDM	30	SE NE	

LOWER KLAMATH NATIONAL WILDLIFE REFUGE					
Twp	Rng	Mer	Sec	Q-Q or UNIT	GLot
48 N	3 E	MDM	30	NE NW	3
48 N	3 E	MDM	30	NW NW	4
48 N	3 E	MDM	30	SW NW	5
48 N	3 E	MDM	30	SE NW	
48 N	3 E	MDM	30	NE SW	
48 N	3 E	MDM	30	NE SE	
48 N	3 E	MDM	30	NW SE	
48 N	3 E	MDM	30	SW SE	
48 N	3 E	MDM	30	SE SE	
48 N	3 E	MDM	31	NE NE	
48 N	3 E	MDM	32	NE NE	1
48 N	3 E	MDM	32	NW NE	
48 N	3 E	MDM	32	SW NE	
48 N	3 E	MDM	32	SE NE	
48 N	3 E	MDM	32	NE NW	
48 N	3 E	MDM	32	NW NW	
48 N	3 E	MDM	32	SW NW	
48 N	3 E	MDM	32	SE NW	
48 N	3 E	MDM	32	NE SW	
48 N	3 E	MDM	32	NE SE	
48 N	3 E	MDM	32	NW SE	
48 N	3 E	MDM	32	SW SE	
48 N	3 E	MDM	32	SE SE	
48 N	3 E	MDM	33		1
48 N	3 E	MDM	33	NE SW	2
48 N	3 E	MDM	33	NW SW	
48 N	3 E	MDM	33	SW SW	
48 N	3 E	MDM	33	SE SW	3
48 N	3 E	MDM	33	SW SE	4



**CLAIM NO. 314**

FOR A VESTED WATER RIGHT

**CLAIMANT:** UNITED STATES DEPARTMENT OF INTERIOR,  
U.S. FISH AND WILDLIFE SERVICE  
911 NE 11TH AVE  
PORTLAND OR 97232

**CLAIM MAP REFERENCE:**

OWRD INVESTIGATION MAPS – T 38 S, R 9 E; T 39 S, R 9 E; T 39 S, R 10 E;  
T 41 S, R 10 E; W.M.

US-F&W 1997 MYLAR SUPPLEMENTAL MAP –T 47 N, R 3 E; T 48 N, R 3 E; M.D.M.

**SOURCES OF WATER:**

UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER, and  
The KLAMATH RIVER, tributary to the PACIFIC OCEAN

**PURPOSE OR USE:**

TO PROVIDE A PRESERVE AND BREEDING GROUND FRO THE PROTECTION OF  
NATIVE BIRDS AND THEIR HABITAT

**VOLUME AND RATE OF USE:**

3,680.1 ACRE-FEET PER YEAR MEASURED AT THE PLACE OF USE, NOT TO EXCEED  
A RATE OF 25.0 CFS MEASURED AT STATION 48, LOCATED AS FOLLOWS:

MEASURING LOCATION	Twp	Rng	Mer	Sec	Q-Q
STATION 48	39 S	10 E	WM	31	NE NW

**PERIOD OF ALLOWED USE:** JANUARY 1 - DECEMBER 31

**DATE OF PRIORITY:** SEPTEMBER 2, 1964

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q
'A' CANAL HEADWORKS	38 S	9 E	WM	30	SW NE
LINK RIVER DAM	38 S	9 E	WM	30	NW SE
LOST RIVER DIVERSION CHANNEL INTAKE AT THE KLAMATH RIVER	39 S	9 E	WM	17	SW NW

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

LOWER KLAMATH NATIONAL WILDLIFE REFUGE Portion Enlarged by Public Law No. 88-567 on September 2, 1964					
Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	10 E	WM	15		5
41 S	10 E	WM	15	SW SW	9
41 S	10 E	WM	15	SE SW	8
41 S	10 E	WM	15	SW SE	7
41 S	10 E	WM	16		5
41 S	10 E	WM	16		7
41 S	10 E	WM	16	SW NE	
41 S	10 E	WM	16	NE SE	6

<b>LOWER KLAMATH NATIONAL WILDLIFE REFUGE</b>					
<b>Portion Enlarged by Public Law No. 88-567 on September 2, 1964</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>GLot</b>
41 S	10 E	WM	16	NW SE	
47 N	3 E	MDM	2	NW NW	4
47 N	3 E	MDM	2	SW NW	
47 N	3 E	MDM	2	NW SW	
47 N	3 E	MDM	2	SW SW	
47 N	3 E	MDM	3	NE NE	1
47 N	3 E	MDM	3	NW NE	2
47 N	3 E	MDM	9	SE SE	
47 N	3 E	MDM	10	SW SW	
47 N	3 E	MDM	10	SE SW	
47 N	3 E	MDM	10	SW SE	
47 N	3 E	MDM	11	NW NW	
48 N	3 E	MDM	15		7
48 N	3 E	MDM	16	NE SW	4
48 N	3 E	MDM	16	NW SW	5
48 N	3 E	MDM	16	SW SW	
48 N	3 E	MDM	16	SE SW	
48 N	3 E	MDM	16	NE SE	2
48 N	3 E	MDM	16	NW SE	3
48 N	3 E	MDM	16	SW SE	
48 N	3 E	MDM	16	SE SE	
48 N	3 E	MDM	17	NE SE	5
48 N	3 E	MDM	17	NW SE	6
48 N	3 E	MDM	17	SW SE	8
48 N	3 E	MDM	17	SE SE	9
48 N	3 E	MDM	20	NE NE	3
48 N	3 E	MDM	21	NE NE	
48 N	3 E	MDM	21	NW NE	
48 N	3 E	MDM	21	SW NE	
48 N	3 E	MDM	21	SE NE	
48 N	3 E	MDM	21	NE NW	
48 N	3 E	MDM	21	NW NW	2
48 N	3 E	MDM	21	SE NW	4
48 N	3 E	MDM	21	NE SW	
48 N	3 E	MDM	22	NE NW	4
48 N	3 E	MDM	22	NW NW	
48 N	3 E	MDM	22	SW NW	
48 N	3 E	MDM	22	SE NW	5
48 N	3 E	MDM	22	NW SW	
48 N	3 E	MDM	22	NESW	6
48 N	3 E	MDM	22	SW SE	
48 N	3 E	MDM	26	NW SW	
48 N	3 E	MDM	27	NW NE	
48 N	3 E	MDM	27	SE NE	
48 N	3 E	MDM	35	NE NW	
48 N	3 E	MDM	35	SE NW	
48 N	3 E	MDM	35	NE SW	
48 N	3 E	MDM	35	SW SW	

**CLAIM NO. 315**

FOR A VESTED WATER RIGHT

**CLAIMANT:** UNITED STATES DEPARTMENT OF INTERIOR,  
U.S. FISH AND WILDLIFE SERVICE  
911 NE 11TH AVE  
PORTLAND OR 97232

**CLAIM MAP REFERENCE:**

OWRD INVESTIGATION MAPS – T 38 S, R 9 E; T 39 S, R 9 E; T 39 S, R 10 E;  
T 40 S, R 8 E, W.M.

US-F&W 1997 MYLAR SUPPLEMENTAL MAP –T 47 N, R 3 E, M.D.M.

**SOURCES OF WATER:**

UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER, and  
The KLAMATH RIVER, tributary to the PACIFIC OCEAN

**PURPOSE OR USE:**

TO PROVIDE A PRESERVE AND BREEDING GROUND FRO THE PROTECTION OF  
NATIVE BIRDS AND THEIR HABITAT

**VOLUME AND RATE OF USE:**

1,141.7 ACRE-FEET PER YEAR MEASURED AT THE PLACE OF USE, NOT TO EXCEED  
A TOTAL RATE OF 9.0 CFS MEASURED AT STATION 48 AND/OR THE ADY/CENTRAL  
CANAL DIVERSION AT KLAMATH RIVER, EACH LOCATED AS FOLLOWS:

MEASURING STATION	Twp	Rng	Mer	Sec	Q-Q
STATION 48	39 S	10 E	WM	31	NE NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

**PERIOD OF ALLOWED USE:** JANUARY 1 - DECEMBER 31

**DATE OF PRIORITY:** NOVEMBER 30, 1944

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q
'A' CANAL HEADWORKS	38 S	9 E	WM	30	SW NE
LINK RIVER DAM	38 S	9 E	WM	30	NW SE
LOST RIVER DIVERSION CHANNEL INTAKE AT THE KLAMATH RIVER	39 S	9 E	WM	17	SW NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

LOWER KLAMATH NATIONAL WILDLIFE REFUGE Portion Enlarged by Deed on November 30, 1944				
Twp	Rng	Mer	Sec	Q-Q or UNIT
47 N	3 E	MDM	9	NE NW
47 N	3 E	MDM	9	SE NW
47 N	3 E	MDM	9	NE SW

<b>LOWER KLAMATH NATIONAL WILDLIFE REFUGE</b>				
<b>Portion Enlarged by Deed on November 30, 1944</b>				
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q or UNIT</b>
47 N	3 E	MDM	9	NW SW
47 N	3 E	MDM	9	SW SW
47 N	3 E	MDM	9	SE SW
47 N	3 E	MDM	9	NW SE
47 N	3 E	MDM	9	SW SE
47 N	3 E	MDM	16	NE NW
47 N	3 E	MDM	16	NW NW
47 N	3 E	MDM	16	SW NW
47 N	3 E	MDM	17	UNIT 12B*
47 N	3 E	MDM	17	NE NE
47 N	3 E	MDM	17	SE NE
47 N	3 E	MDM	17	NE SE
47 N	3 E	MDM	17	SE SE
47 N	3 E	MDM	20	NW NE

\* very small fraction

**CLAIM NO. 316**

FOR A VESTED WATER RIGHT

**CLAIMANT:** UNITED STATES DEPARTMENT OF INTERIOR,  
U.S. FISH AND WILDLIFE SERVICE  
911 NE 11TH AVE  
PORTLAND OR 97232

**CLAIM MAP REFERENCE:**

OWRD INVESTIGATION MAPS – T 38 S, R 9 E; T 39 S, R 9 E; T 39 S, R 10 E;  
T 40 S, R 8 E, W.M.

US-F&W 1997 MYLAR SUPPLEMENTAL MAP –T 47 N, R 3 E, M.D.M.

**SOURCES OF WATER:**

UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER, and  
The KLAMATH RIVER, tributary to the PACIFIC OCEAN

**PURPOSE OR USE:**

TO PROVIDE A PRESERVE AND BREEDING GROUND FRO THE PROTECTION OF  
NATIVE BIRDS AND THEIR HABITAT

**VOLUME AND RATE OF USE:**

87.6 ACRE-FEET PER YEAR MEASURED AT THE PLACE OF USE, NOT TO EXCEED A  
TOTAL RATE OF 0.6 CFS MEASURED AT STATION 48 AND/OR THE ADY/CENTRAL  
CANAL DIVERSION AT KLAMATH RIVER, EACH LOCATED AS FOLLOWS:

MEASURING STATION	Twp	Rng	Mer	Sec	Q-Q
STATION 48	39 S	10 E	WM	31	NE NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

**PERIOD OF ALLOWED USE:** JANUARY 1 - DECEMBER 31

**DATE OF PRIORITY:** JULY 14, 1949

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**


POD Name	Twp	Rng	Mer	Sec	Q-Q
'A' CANAL HEADWORKS	38 S	9 E	WM	30	SW NE
LINK RIVER DAM	38 S	9 E	WM	30	NW SE
LOST RIVER DIVERSION CHANNEL INTAKE AT THE KLAMATH RIVER	39 S	9 E	WM	17	SW NW
ADY/CENTRAL CANAL DIVERSION INTAKE AT THE KLAMATH RIVER	40 S	8 E	WM	15	NE NW

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

<b>LOWER KLAMATH NATIONAL WILDLIFE REFUGE</b>					
<b>Portion Enlarged by Final Judgment No. 4574 for July 14, 1949</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>GLot</b>
47 N	3 E	MDM	4	SE SW	8
47 N	3 E	MDM	9	SW NW	
47 N	3 E	MDM	16	NW NE	
47 N	3 E	MDM	16	SE NW	
47 N	3 E	MDM	16	NW SW	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



---

Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication