

**BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of the UNITED)	PARTIAL ORDER OF
STATES DEPARTMENT OF INTERIOR,)	DETERMINATION
BUREAU OF LAND MANAGEMENT)	
_____)	
)	Water Right Claim 353

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

A. FINDINGS OF FACT

1. On April 30, 1997, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT (BLM) timely submitted a Statement and Proof of Claim (Claim 353) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication claiming a federal reserved water right under an Executive Order entitled Public Water Resource (PWR) No. 107, authorized by President Coolidge.
2. On August 3, 1999, the BLM timely amended Claim 353 as to the location and reducing the rate and duty.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation), stating the claim was approved. However, in making his preliminary evaluation of this claim, due to the timing involved in issuing the Preliminary Evaluation, the Adjudicator did not evaluate or account for BLM’s claim amendment as to the location and reducing the rate and duty.
4. On May 8, 2000, BLM timely filed Contest 3976 to the Preliminary Evaluation of Claim 353.
5. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users”, filed Contest 3606: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co., Malin Irrigation District, Midland District Improvement Company,

Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Modoc Lumber Co., Bradley S. Luscombe, Berlva Pritchard¹, Don Vincent², Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters and other like claims of the BLM as Case 276.
7. On November 14, 2003, Klamath Project Water Users voluntarily withdrew Contest 3606. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (Nov. 14, 2003).
8. On August 2, 2004, the OWRD and BLM executed SETTLEMENT AGREEMENT BETWEEN THE OREGON WATER RESOURCES DEPARTMENT AND THE UNITED STATES BUREAU OF LAND MANAGEMENT ON CLAIM NOS. 325-375 (Settlement Agreement) which resolved the remaining contest (Contest 3976).
9. On August 2, 2004, the Adjudicator withdrew Case 276 from the Office of Administrative Hearings.
10. The August 30, 1999 amendment to Claim 353 corrected the location description of the point of diversion from SENE, SECTION 12 to SENW, SECTION 12 (TOWNSHIP 41 SOUTH RANGE 3 EAST, WM). Both the original and amended Claim 353 state the source of water (Unnamed Spring 41312-2) is a tributary to an unnamed tributary of Skookum Creek. The amended location of Unnamed Spring 41312-2 is shown on a map labeled "Spring Locations" submitted with BLM's August 3, 1999 amendment (Claim 353, Page 20). It was readily determinable by comparing the "Spring Locations" map with a USGS 'Soda Mountain' Quad map that Rocky Gulch is the name of the stream on the "Spring Locations" map closest to Unnamed Spring 41312-2. Therefore, OWRD finds the Unnamed Spring 41312-2 should be listed as a tributary to Rocky Gulch rather than as a tributary to an unnamed tributary of Skookum Creek.

¹ Berlva Pritchard voluntarily withdrew from Contest 3606 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3606 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and BLM is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. the gallons per minute have been converted to cubic feet per second for administrative convenience; and
 - b. the source of water, an unnamed spring, is identified as a tributary to Rocky Gulch.

2. The Executive Order entitled PWR No. 107 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON PUBLIC WATER RESERVE NO. 107 is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 353 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 353

CLAIM MAP REFERENCE: CLAIM # 353, PAGE 12

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
3040 BIDDLE RD
MEDFORD, OR 97504

BLM PROJECT NUMBER: 41312-2

SOURCE OF WATER: UNNAMED SPRING, tributary to ROCKY GULCH

PURPOSE or USE: HUMAN CONSUMPTION AND LIVESTOCK WATERING

RATE OF USE: 0.0001 CUBIC FEET PER SECOND

DUTY: 0.031 ACRE FEET PER YEAR

PERIOD OF ALLOWED USE:

Use	Period
Human Consumption And Livestock	May 15 - October 15

DATE OF PRIORITY: APRIL 17, 1926

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	3 E	WM	12	SE NW	2820 FEET NORTH AND 2980 FEET WEST FROM SE CORNER, SECTION 12

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	3 E	WM	12	SE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication