

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of the)	PARTIAL ORDER OF
UNITED STATES DEPARTMENT OF)	DETERMINATION
INTERIOR, U.S. NATIONAL PARK)	
SERVICE)	
_____)	Water Right Claim 591

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 INTERIOR, NATIONAL PARK SERVICE (USNPS) timely submitted a Statement and Proof of Claim (Claim 591) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication claiming a federal reserved water right under the Act of May 22, 1902, ch. 820, §1, 32 Stat. 202; the Act of Aug. 25, 1916, ch. 408, §2, 39 Stat. 535 (National Park Service Organic Act); the Act of May 14, 1932, ch 184, 47 Stat. 155; the U.S. DISTRICT COURT OF OREGON, FINAL JUDGMENT NO. CIV-424 (C.C. Yawkey, *et al.*, Dec. 5, 1940); the U.S. DISTRICT COURT OF OREGON, No. CIV-785, JUDGMENT ON THE DECLARATION OF TAKING AND AMENDED DECLARATION OF TAKING (Gladstone Land and Timber Co., Jan. 30, 1942); Pub. L. No. 96-553, 94 Stat. 3255 (Dec. 19, 1980); and Pub.L. No. 97-250, 96 Stat. 709 (Sept. 8, 1982).
2. On October 1, 1999, the USNPS timely amended Claim 591 to show the claimed priority date for each subdivision of a reach.
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.
4. On May 5, 2000, the Claimant, USNPS, timely filed Contest 3935 to the Preliminary Evaluation of Claim 591.
5. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3005 to the Claim and/or Preliminary Evaluation of Claim 591.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as “Nicholson *et al.*,” filed Contest 3113 to the Claim and/or Preliminary Evaluation of Claim 591: Roger Nicholson; Roger Nicholson Cattle Co.¹; Lloyd Nicholson Trust²; Dorothy Nicholson Trust³; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches⁴; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company⁵; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood; Kenneth Zamzow; Anita Nicholson⁶; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood⁷; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; and Dwight T. Mebane and Helen Mebane⁸.
7. 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 USNPS as Case 001.
8. On August 2, 2001, OWRD, the Claimants (USNPS) and the Contestants (WaterWatch, and Nicholson *et al.*) executed a STIPULATION (Settlement Agreement) which resolved the Contests 3005, 3113, and 3935 to Claim 591.
9. On August 2, 2001, the Claims 591-601 were withdrawn from the Office of Administrative Hearings pursuant to the Settlement Agreement.
10. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS the date of reservation is the priority date of a federal reserved water right. This claim has the following reservation dates: May, 22, 1902, based on the ACT OF MAY 22, 1902, CH. 820, §1, 32 STAT. 202; and May 14, 1932, based on the ACT OF MAY 14, 1932, CH 184, 47 STAT. 155.

¹ Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

² Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

³ Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

⁴ Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Jim McAuliffe and McAuliffe Ranches

⁵ Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Joe McAuliffe Company

⁶ Nicholson Investments, LLC, successor in interest to Anita Nicholson

⁷ On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3113. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

⁸ Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants (USNPS) and the Contestants (WaterWatch, and Nicholson *et al.*) is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The combination of the ACT OF MAY 22, 1902, CH. 820, §1, 32 STAT. 202; the ACT OF AUG. 25, 1916, CH. 408, §2, 39 STAT. 535; the ACT OF MAY 14, 1932, CH 184, 47 STAT. 155 and PUB. L. NO. 97-250, 96 STAT. 709 (Sept. 8, 1982) 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 591 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 591

CLAIM MAP REFERENCE: USNPS MYLAR MAPS FILED 10-1-1999

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR
U.S. NATIONAL PARK SERVICE
1201 OAKRIDGE DR, SUITE 250
FORT COLLINS, CO 80525

SOURCE OF WATER:
ANNIE CREEK AND ITS TRIBUTARIES WITHIN THE BOUNDARY OF CRATER LAKE
NATIONAL PARK, tributary to the WOOD RIVER

PURPOSE OR USE:
PRESERVATION AND PROTECTION OF ALL NATURAL AND HISTORIC OBJECTS,
TIMBER AND WILDLIFE, AND CONSERVATION OF SCENERY

RATE:
ALL NATURAL FLOW LESS THOSE AMOUNTS NEEDED FOR CRATER LAKE
NATIONAL PARK OUT-OF-STREAM USES

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

DATES OF PRIORITY AND THE PLACES OF USE ARE LOCATED AS FOLLOWS:

MAINSTEM ANNIE CREEK - REACH A							
Priority Date		Twp	Rng	Mer	Sec		Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	5 E	WM	13	At Annie Springs	11.4
	Lower Reach Boundary	32 S	6 E	WM	13	PB 39	2.9
MAINSTEM ANNIE CREEK - REACH B							
May 14, 1932	Upper Reach Boundary	32 S	6 E	WM	13	PB 39	2.9
	Lower Reach Boundary	32 S	6 E	WM	25	PB 58	0.0

*River miles are measured upstream from the Crater Lake National Park boundary.

UNNAMED TRIBUTARY "ANNIE-1"							
Priority Date		Twp	Rng	Mer	Sec		Approx River Mile*
May 22, 1902	Upper Reach Boundary	32 S	6 E	WM	3		0.6
	Lower Reach Boundary	32 S	6 E	WM	10		0.0

* River miles are measured upstream from the confluence of Annie-1 with Annie Creek.

EAST FORK OF ANNIE CREEK							
Priority Date		Twp	Rng	Mer	Sec		Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	15		4.9
	Lower Reach Boundary	32 S	6 E	WM	4		0.0

* River miles are measured upstream from the confluence of the East Fork with Annie Creek

UNNAMED TRIBUTARY "ANNIE-2," TRIBUTARY TO EAST FORK OF ANNIE CREEK							
Priority Date		Twp	Rng	Mer	Sec		Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	27		1
	Lower Reach Boundary	31 S	6 E	WM	28		0.0

* River miles are measured upstream from the confluence with the tributary.

UNNAMED TRIBUTARY "ANNIE-3," TRIBUTARY TO EAST FORK OF ANNIE CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	15	1.9
	Lower Reach Boundary	31 S	6 E	WM	28	0.0

* River miles are measured upstream from the confluence with the tributary.

UNNAMED TRIBUTARY "ANNIE-4"						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	32 S	5 E	WM	1	3.3
	Lower Reach Boundary	32 S	6 E	WM	4	0.0

* River miles are measured upstream from the confluence of Annie Creek-4 with Annie Creek

MIDDLE FORK OF ANNIE CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	21	2.7
	Lower Reach Boundary	31 S	6 E	WM	33	0.0

* River miles are measured upstream from the confluence of the Middle Fork with Annie Creek

UNNAMED TRIBUTARY "ANNIE-5," TRIBUTARY TO MIDDLE FORK OF ANNIE CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	20	0.6
	Lower Reach Boundary	31 S	6 E	WM	28	0.0

* River miles are measured upstream from the confluence with the tributary.

POLE BRIDGE CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	5 E	WM	36	1.9
	Lower Reach Boundary	31 S	6 E	WM	32	0.0

* River miles are measured upstream from the confluence of Pole Bridge Creek with Annie Creek

MUNSON CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	8	4.3
	Lower Reach Boundary	31 S	6 E	WM	29	0.0

* River miles are measured upstream from the confluence of Munson Creek with Annie Creek

UNNAMED TRIBUTARY "ANNIE-6," TRIBUTARY TO MUNSON CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	9	0.9
	Lower Reach Boundary	31 S	6 E	WM	17	0.0

* River miles are measured upstream from the confluence of Annie-6 with Munson Creek

GOODBYE CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	17	1.4
	Lower Reach Boundary	31 S	6 E	WM	30	0.0

* River miles are measured upstream from the confluence of Goodbye Creek with Annie Creek

UNNAMED TRIBUTARY "ANNIE-7," TRIBUTARY TO GOODBYE CREEK						
Priority Date		Twp	Rng	Mer	Sec	Approx River Mile*
May 22, 1902	Upper Reach Boundary	31 S	6 E	WM	20	1.2
	Lower Reach Boundary	31 S	6 E	WM	30	0.0

* River miles are measured upstream from the confluence with the tributary.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication