

**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	)	CORRECTED PARTIAL ORDER OF
THE KLAMATH TRIBES AND THE	)	DETERMINATION
UNITED STATES DEPARTMENT OF	)	
INTERIOR, BUREAU OF INDIAN	)	
AFFAIRS AS TRUSTEE ON BEHALF OF	)	
THE KLAMATH TRIBES	)	Water Right Claim 623
_____	)	(Klamath Marsh)

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

**A. FINDINGS OF FACT**

1. Claims 615 and 623, pertaining to the Klamath Marsh, (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 contests<sup>1</sup> were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 284.
2. Claim 615 was filed by the Klamath Tribes. It incorporates by reference the United States Bureau of Indian Affairs' claim 623 based on the hunting, trapping, fishing, and gathering purposes of the Klamath Treaty of 1864.
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 615 and 623 on December 1, 2011.
4. Exceptions were filed to the Proposed Order within the exception filing deadline by John M. Mosby and Marilyn Mosby. 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 615 and

<sup>1</sup> Claim 615: 1774, 2062, 3019, 3122, 3252, 3317, 3647, 4005; Claim 623: 1775, 3022, 3124, 3255, 3325, 3655, 3884, 4013.

623. The exceptions are not found to be persuasive and therefore, no modifications are made to the Proposed Order.

6. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) Finding of Fact #29 is added as set forth in Section A.7, below and (2) the section titled "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 Claim 623. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
7. **Proposed Order Findings of Fact.** Finding of Fact #29 is added as follows:

29. OWRD describes the place of use for Claim 622 as the Klamath Marsh located on former Klamath Indian Reservation lands within the following locations:

Township 29 South, Range 9.0 East, W.M., Sections 13- 15, 22-28, 32-36  
Township 30 South, Range 8.0 East, W.M., Sections 13-15, 21-28, 31-36  
Township 30 South, Range 9.0 East, W.M., Sections 1-17, 19-33, 35-36  
Township 30 South, Range 10 East, W.M., Sections 17-20, 29-32  
Township 31 South, Range 7.0 East, W.M., Sections 1, 12  
Township 31 South, Range 8.0 East, W.M., Sections 1-36  
Township 31 South, Range 9.0 East, W.M., Sections 3-10, 17-20, 28-33  
Township 32 South, Range 7.0 East, W.M., Sections 1, 12, 24-25, 36  
Township 32 South, Range 8.0 East, W.M., Sections 1-2, 5-8, 17-21, 27-30  
Township 32 South, Range 9.0 East, W.M., Section 4

OWRD Ex. 1 at 158 (map dated 10-1-1999 submitted with amended claim).

8. For administrative convenience, OWRD has addressed Claim 615 in a separate Partial Order of Determination for Claim 615. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 615 and the United States' Claim 623, and the ownership of the water rights that are recognized in these claims.

## **B. DETERMINATION**

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
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 615 incorporates the United States' Claim 623 by reference. The Klamath Tribes' claim is duplicative of the United States' claim, 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 615 is denied in a separate Partial Order of Determination for Claim 615. The United States' Claim 623 is determined in this Partial Order of Determination for Claim 623.

3. Based on the file and record herein, IT IS ORDERED that Claim 623 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 623**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 623, PAGES 25-32, AMENDED 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 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** The KLAMATH MARSH, tributary to WILLIAMSON RIVER

**PURPOSE or USE:**

MINIMUM WATER LEVELS IN KLAMASH MARSH TO ESTABLISH AND MAINTAIN A HEALTHY AND PRODUCTIVE HABITAT TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND MARSH WATER LEVELS:**

THE KLAMATH MARSH IS TO BE MAINTAINED AT THE FOLLOWING MINIMUM WATER LEVELS AS DETERMINED BY ELEVATION ABOVE MEAN SEA LEVEL AT THE SILVER LAKE HIGHWAY GAGE:

**ELEVATION OF WATER SURFACE**

MONTH	MINIMUM WATER LEVELS (IN FEET ABOVE MEAN SEA LEVEL)
January	4514.32
February	4514.47
March	4514.81
April	4514.87
May	4514.32
June	4514.04
July	4513.51
August	4513.35
September	4513.34
October	4513.46
November	4513.68
December	4513.96

**DATE OF PRIORITY:** TIME IMMEMORIAL

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

THE KLAMATH MARSH LOCATED ON FORMER KLAMATH INDIAN RESERVATION LANDS LOCATED WITHIN THE FOLLOWING LOCATIONS:

Twp	Rng	Mer	Sections
29 S	9.0 E	WM	13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36
30 S	8.0 E	WM	13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36
30 S	9.0 E	WM	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36
30 S	10.0 E	WM	17, 18, 19, 20, 29, 30, 31, 32
31 S	7.0 E	WM	1, 12
31 S	8.0 E	WM	All
31 S	9.0 E	WM	3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33
32 S	7.0 E	WM	1, 12, 24, 25, 36
32 S	8.0 E	WM	1, 2, 5, 6, 7, 8, 17, 18, 19, 20, 21, 27, 28, 29, 30
32 S	9.0 E	WM	4

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication