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 KLAMATH TRIBES	)))	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 612

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

A. FINDINGS OF FACT

1. Claims 612, 625-640 (pertaining to the Williamson River), 641-567 (pertaining to the Sprague River), 658-667 (pertaining to the Sycan River), 668-670 (pertaining to the Wood River), and 671-673 (pertaining to the Klamath River) (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[1] were referred to the Office of Administrative Hearings for contested case hearings which were designated as Cases 277 (Claims 625-640) , 279 (Claims 658-667), 280 (Claims 641-657), 281 (668-670), and 282 (671-673).

[1] Claim 612: 28, 1773, 2062, 2730, 2735, 2738, 2739, 2740, 2769, 2802, 3016, 2429, 3314, 3644, 4002; Claim 625: 2807, 3024, 3125, 3327, 3886, 4015; Claim 626: 1776, 3025, 3328, 3887, 4016; Claim 627: 1777, 3026, 3329, 3888, 4017; Claim 628: 1778, 3027, 3330, 3889, 4018; Claim 629: 1779, 3028, 3331, 3890, 4019; Claim 630: 1780, 3029, 3332, 3891, 4020; Claim 631: 1781, 3030, 3333, 3892, 4021; Claim 632: 1782, 3031, 3334, 3893, 4022; Claim 633: 1783, 3032, 3335, 3894, 4023; Claim 634: 3033, 3336, 3895, 4024; Claim 635: 3034, 3126, 3337, 3896, 4025; Claim 636: 3035, 3127, 3338, 3897, 4026; Claim 637: 3036, 3339, 3898, 4027; Claim 638: 3037, 3340, 3899, 4028; Claim 639: 3038, 3341, 3900, 4029; Claim 640: 2786, 3039, 3342, 3901, 4030; 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 658: 2809, 3057, 3360, 3919, 4048; Claim 659: 3058, 3361, 3920, 4049; Claim 660: 3059, 3362, 3921, 4050; Claim 661: 3060, 3363, 3922, 4051; Claim 662: 2810, 3061, 3364, 3923, 4052; Claim 663: 2766, 2811, 3062, 3365, 3924, 4053; Claim 664: 3063, 3366, 3925, 4054; Claim 665: 2767, 2812, 3064, 3367, 3926, 4055; Claim 666: 3065, 3368, 3927, 4056; Claim 667: 2768, 2813, 3066, 3369, 3928, 4057; Claim 668: 2733, 2736, 2743, 3067, 3370, 3929, 4058; Claim 669: 2744, 3068, 3371, 3930, 4059; Claim 670: 2745, 3069, 3372, 3931, 4060; Claim 671: 2064, 3070, 3257, 3373, 3657, 3932, 4061; Claim 672: 2065, 3071, 3258, 3374, 3658, 3933, 4062; Claim 673: 2066, 3072, 3259, 3375, 3659, 3934, 4063.

2. Claim 612 was filed by the Klamath Tribes. It is a composite claim incorporating by reference BIA Claims 625-673 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 PROPOSED ORDERS for Cases 277, 279, 280, and 281 on December 1, 2011, and a PROPOSED ORDER for Case 282 on April 16, 2012.

4. For administrative convenience, OWRD has addressed Claims 625-673 in five separate Partial Orders of Determination (one for each group of claims). Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 612 and the United States' claims 625-673, and the ownership of the water rights that are recognized in these claims.

B. DETERMINATION

1. 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 625-673 by reference. The Klamath Tribes' claim is 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). The United States' Claims 625-673 are determined in five separate Partial Orders of Determination. Claim 612 is denied in this Partial Order of Determination for Claim 612.

2. Based on the file and record herein, IT IS ORDERED that Claim 612 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 613

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 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On April 30, 1997, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted, in part, five Statement and Proof of Claims (Claim 617, 618, 619, 620, and 621) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, and 621.

4. On October 1, 1999, the Klamath Tribes timely amended Claim 613. This amendment "adopts and incorporates by reference," the amended claims of the BIA designated KL-2 (Claim 617), KL-3 (Claim 618), KL-5 (Claim 619), KL-8 (Claim 620), and KL-15 (Claim 621). (Note: the BIA only amended Claims 618 and 621 – April 16, 1999).

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating "[s]ee claims 622-673 filed by the United States Bureau of Indian Affairs as trustee on behalf of the Klamath Tribes."

6. On May 5, 2000, PacifiCorp timely filed Contest 2062 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4003 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.

8. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3017 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.

9. On May 8, 2000, John M. Mosby, Marilyn Mosby, Boyd P. Braren and Boyd P. Braren Trust [1], timely filed Contest 3120 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.

10. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District timely filed Contest 3250 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.

11. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3315 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613: Roger Nicholson; Roger Nicholson Cattle Co.[2]; Lloyd Nicholson Trust[3]; Dorothy Nicholson Trust[4]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[5]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[6]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[7]; Kenneth Zamzow[8]; Anita Nicholson[9]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[10]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[11]; Walter Seput[12]; Clifford Rabe;

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[1] TPC, LLC and Robert Cook, successors in interest to Boyd P. Braren and Boyd P. Braren Trust

[2] Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

[3] Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

[4] Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

[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 Jim McAuliffe and McAuliffe Ranches

[6] 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

[7] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3315. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[8] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[9] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[10] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[11] 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.

Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[13]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[14]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[15]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[16]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[17]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm Bryant[18]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[19]; and Hart Estate Investment Company[20].

12. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3645 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613: 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.[21], 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 Pritchard[22], Don Vincent[23], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

13. 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 Klamath Tribes and the BIA as Case 283.

14. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3645. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES;

Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[12] James G. Wayne, Jr., successor in interest to Walter Seput

[13] Lillian Hill, successor in interest to William V. Hill

[14] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[15] Michael LaGrande, successor in interest to Robert Bartell

[16] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[17] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

[18] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[20] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[21] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3645 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[22] Berlva Pritchard voluntarily withdrew from Contest 3645 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[23] Don Vincent voluntarily withdrew from Contest 3645 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

[PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002).

15. On May 20, 2003, the WaterWatch's Contest 3017 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS (May 20, 2003).

16. On July 22, 2003, John M. Mosby and Marilyn Mosby voluntarily withdrew from Contest 3120. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY JOHN M. MOSBY (July 22, 2003).

17. On August 6, 2003, Medford Irrigation District voluntarily withdrew from Contest 3250. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD IRRIGATION DISTRICT (Aug. 6, 2003).

18. On August 15, 2003 Rogue River Valley Irrigation District voluntarily withdrew from Contest 3250. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY ROGUE RIVER VALLEY IRRIGATION DISTRICT (Aug. 15, 2003).

19. On March 16, 2005, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3250. *See* VOLUNTARY WITHDRAWAL OF CONTEST NO. 3250 BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS (March 16, 2005).

20. On December 1, 2006 the Klamath Tribes timely submitted an amendment to Claim 613 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).

21. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*, PacifiCorp, and TPC, LLC and Robert Cook) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contests 2062, 3315, and 4003).

22. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

23. No contests or claims of injury were filed to the Claimants' December 1, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

24. The claim amendment requirements under OAR 690-030-0085 have been met.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein.

2. The Claimant's December 1, 2006 amendment pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimants' claim.

3. Both the United States and the Klamath Tribes filed consumptive use claims. The Klamath Tribes' Claim 615 incorporates the United States' Claims 617-621, and 729-730 by reference. The Klamath Tribes' claim is 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). United States' Claims 617-621, and 729-730 are determined in a separate Partial Orders of Determination for each of those claims. Claim 613 is denied in this Partial Order of Determination for Claim 613.

4. Based on the file and record herein, IT IS ORDERED that Claim 613 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 614

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

A. FINDINGS OF FACT

1. Claims 614 and 624, pertaining to Seeps and Springs, (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[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 285.

2. Claim 614 was filed by the Klamath Tribes. It incorporates by reference the United States Bureau of Indian Affairs' Claim 624 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 614 and 624 on December 1, 2011.

4. For administrative convenience, OWRD has addressed Claim 624 in a separate Partial Order of Determination for Claim 624. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 614 and the United States' Claim 624, and the ownership of the water rights that are recognized in these claims.

[1] Claim 614: 2062, 3018, 3121, 3251, 3316, 3646, 4004; Claim 624: 3023, 3256, 3326, 3656, 3885, 4014

B. DETERMINATION

1. 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 614 incorporates the United States' Claim 624 by reference. The Klamath Tribes' claim is 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). The United States' Claim 624 is determined in a separate Partial Order of Determination for Claim 624. Claim 614 is denied in this Partial Order of Determination for Claim 614.

2. Based on the file and record herein, IT IS ORDERED that Claim 614 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 615

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is 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[1] 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. For administrative convenience, OWRD has addressed Claim 623 in a separate Partial Order of Determination for Claim 623. 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.

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

B. DETERMINATION

1. 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). The United States' Claim 623 is determined in a separate Partial Order of Determination for Claim 623. Claim 615 is denied in this Partial Order of Determination for Claim 615.

2. Based on the file and record herein, IT IS ORDERED that Claim 615 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 616

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

A. FINDINGS OF FACT

1. Claims 616 and 622, pertaining to the Upper Klamath Lake, (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[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 286.

2. Claim 616 was filed by the Klamath Tribes. It incorporates by reference the United States Bureau of Indian Affairs' Claim 622 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 616 and 622 on April 16, 2012.

4. For administrative convenience, OWRD has addressed Claim 622 in a separate Partial Order of Determination for Claim 622. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 616 and the United States' Claim 622, and the ownership of the water rights that are recognized in these claims.

[1] Claim 616: 2062, 2731, 2741, 3020, 3123, 3253, 3318, 3648, 4006; Claim 622: 2063, 2732, 2742, 3021, 3254, 3318, 3324, 3654, 3883, 4012

B. DETERMINATION

1. 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 616 incorporates the United States' Claim 622 by reference. The Klamath Tribes' claim is 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, the United States' Claim 622 is determined in a separate Partial Order of Determination for Claim 622 and Claim 616 is denied in this Partial Order of Determination for Claim 616.

2. Based on the file and record herein, IT IS ORDERED that Claim 616 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 617

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 INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted a Statement and Proof of Claim (Claim 617) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, and 621.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 617 was denied.

5. On May 8, 2000, the Klamath Tribes timely filed Contest 4007 to the Claim and/or Preliminary Evaluation of Claim 617.

6. On May 8, 2000, the BIA timely filed Contest 3878 to the Claim and/or Preliminary Evaluation of Claim 617.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3319 to the Claim and/or Preliminary Evaluation of Claim 617: Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm

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[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] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3319. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3319. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3319. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] 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; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3319. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3319. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interest to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3319. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3649 to the Claim and/or Preliminary Evaluation of Claim 617: 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.[20], 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 Pritchard[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. 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 Klamath Tribes and the BIA as Case 283.

10. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3649. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002).

11. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contest 3319, 3878, and 4007).

12. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

13. The land underlying Claim 617 is within the boundaries of the former Klamath Indian Reservation.

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[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3319. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3649 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3649 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3649 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

14. The primary purposes of the Tribes' reacquisition of the land underlying Claim 617 are for irrigation and for a fish hatchery and aquaculture. *See* DECLARATION OF ALLEN T. FOREMAN (REVISED EXHIBIT C2) (Nov.13, 2006), admitted into the record November 21, 2006.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein.

2. The Klamath Indian Tribe Restoration Act of August 27, 1986, 25 USC § 566, when combined with the Tribes' reacquisition of the parcel underlying this claim for the primary purposes of irrigation, a fish hatchery and aquaculture, is a valid basis for this claim. The Klamath Indian Tribe Restoration Act provides, among other things, that federal recognition of the Tribes is restored and that "[a]ll rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority...are restored...." 25 USC § 566(b). The Ninth Circuit has held that where a federally recognized Indian tribe reacquires land that was formerly a part of its reservation, the land is treated "in a manner analogous to that of a newly created federal reservation...." *United States v. Anderson*, 736 F2d 1358, 1363 (1984). Water rights for such land are implied to the extent necessary to "fulfill the very purposes for which [the] reservation was created." *Id.* The priority date of any such rights is the date of reacquisition by the Tribes.[23] *Id.* The land underlying Claim 617 is within the boundaries of the former Klamath Indian Reservation, and was acquired for the primary purposes of irrigation and a fish hatchery and aquaculture. A water right with the priority date of the reacquisition of the land by the Klamath Tribes is recognized for these primary purposes.

2. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 617 is approved as set forth in the following Water Right Claim Description.

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[23] The determination of this claim need not and does not address the issue of implied water rights for land acquired by a federally recognized Indian tribe that lies outside the boundaries of its reservation. Nor does the determination of this claim address the issue of implied water rights for privately held land subsequently acquired by the federal government outside the context of a federally recognized Indian tribe's reacquisition of land within the boundaries of its former reservation.

[Beginning of Water Right Claim Description]

CLAIM NO. 617
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 617, PAGE 0022

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

PARCEL NAME: BRAYMILL

SOURCE OF WATER: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE or USE:
FISH HATCHERY AND AQUACULTURE (NON-CONSUMPTIVE USE EXCEPT FOR EVAPORATION); IRRIGATION OF 12.8 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE

RATE, DUTY, AND PERIOD OF USE:

Use	Rate (CFS)*	Duty	Period
Fish Hatchery and Aquaculture	0.50	376.0 Acre-feet/Year	January 1 - December 31
Practicably Irrigable Acreage	0.15	1.88 Acre-Feet per acre irrigated during the irrigation season of each year	April 1 - October 31

*** MEASURED AT THE POINT OF DIVERSION**

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DATE OF PRIORITY: MAY 8, 1992

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	8 E	WM	19	NE SW	250 FEET NORTH AND 165 FEET WEST FROM SE CORNER, NESW, SECTION 19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FISH HATCHERY AND AQUACULTURE				
Twp	Rng	Mer	Sec	Q-Q
34 S	8 E	WM	19	NE SW

PRACTICALLY IRRIGABLE ACREAGE					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	19	NE SW	12.8

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 618

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 INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted a Statement and Proof of Claim (Claim 618) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, and 621.

4. On April 20, 1999, the BIA timely amended Claim 618 to correct the legal description of the place of use.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 618 was denied.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4008 to the Claim and/or Preliminary Evaluation of Claim 618.

7. On May 8, 2000, the BIA timely filed Contest 3879 to the Claim and/or Preliminary Evaluation of Claim 618.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3320 to the Claim and/or Preliminary Evaluation of Claim 618: Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm

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[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] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3320. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3320. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3320. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] 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; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3320. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3320. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interest to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3320. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

9. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3650 to the Claim and/or Preliminary Evaluation of Claim 618: 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.[20], 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 Pritchard[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

10. 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 Klamath Tribes and the BIA as Case 283.

11. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3650. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002).

12. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contest 3320, 3879, and 4008).

13. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

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[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3320. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3650 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3650 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3650 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 618 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 618
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 618, MYLAR MAP FILED APRIL 21, 2006

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

PARCEL NAME: BROWN CEMETERY

SOURCE OF WATER: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE or USE:
IRRIGATION OF 3.17 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE.

RATE OF USE:
0.08 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
2.27 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	12 E	WM	13	NE SE	32	430 FEET SOUTH FROM NW CORNER, NESE, SECTION 13

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICALLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	12 E	WM	13	SW NE	32	3.17
36 S	12 E	WM	13	SE NE	32	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 619

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 INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted a Statement and Proof of Claim (Claim 619) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, and 621.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 619 was denied.

5. On May 8, 2000, the Klamath Tribes timely filed Contest 4009 to the Claim and/or Preliminary Evaluation of Claim 619.

6. On May 8, 2000, the BIA timely filed Contest 3880 to the Claim and/or Preliminary Evaluation of Claim 619.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3321 to the Claim and/or Preliminary Evaluation of Claim 619: Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm

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[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] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3321. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] 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; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interest to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3651 to the Claim and/or Preliminary Evaluation of Claim 619: 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.[20], 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 Pritchard[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. 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 Klamath Tribes and the BIA as Case 283.

10. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3651. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002)

11. On November 29, 2006, the BIA timely submitted an amendment to Claim 619 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Nov. 29, 2006).

12. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contest 3321, 3880, and 4009).

13. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

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[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3321. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3651 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3651 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3651 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

14. OWRD finds that the place of use listed in the Settlement Agreement, being LOT 3 AND 6 (NE¼ NW¼), SECTION 32, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M. is incorrect. The correct place of use is LOT 3 AND 6 (NE¼ NW¼), SECTION 32, TOWNSHIP 35 SOUTH, RANGE 12 EAST, W.M.

15. No contests or claims of injury were filed to the Claimant's November 29, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein, with two exceptions:

    a. a scrivener's error as described in Finding 14, above; the township for the place of use is corrected to TOWNSHIP 35 SOUTH, and

    b. the provision in Paragraph 1 of the Settlement Agreement that provides the Point of Diversion for Claim 619; the Point(s) of Diversion for Claim 619 is as set forth in Paragraphs 2 through 6 of this Determination, and in the Water Right Claim Description, below.

2. The Claimants' timely amendment made on November 29, 2006, pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimants' claim.

3. The relocated point of diversion within LOT 10, NENE, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21 is approved.

4. The diversion of water from the original point of diversion, located within the SESE, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 125 FEET EAST FROM NW CORNER, SESE, SECTION 3, is no longer authorized; removal of the Chiloquin Dam was completed on August 21, 2008.

5. The quantity of water diverted at the relocated point of diversion on the Williamson River must not exceed the quantity of water lawfully available at the original point of diversion on the Sprague River.

6. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

7. Based on the file and record herein, IT IS ORDERED that Claim 619 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 619
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 619, MYLAR MAP FILED NOVEMBER 29, 2006

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

PARCEL: HILL CEMETERY

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

PURPOSE or USE:
IRRIGATION OF 7.5 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE.

RATE OF USE:
0.19 CUBIC FOOT PER SECOND (CFS) TO BE MEASURED AT THE POINT OF DIVERSION, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
2.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
35 S	7 E	WM	32	NE NW	3	250 FEET SOUTH AND 250 FEET WEST FROM NE CORNER, NENW, SECTION 32

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Practically Irrigable Acreage						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	12 E	WM	32	NE NW	3 and 6	7.50

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION ON THE SPRAGUE RIVER.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 620

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 INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted a Statement and Proof of Claim (Claim 620) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, and 621.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 620 was denied.

5. On May 8, 2000, the Klamath Tribes timely filed Contest 4010 to the Claim and/or Preliminary Evaluation of Claim 620.

6. On May 8, 2000, the BIA timely filed Contest 3881 to the Claim and/or Preliminary Evaluation of Claim 620.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3322 to the Claim and/or Preliminary Evaluation of Claim 620: Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm

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[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] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3322. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3322. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3322. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] 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; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3322. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3322. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interest to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3322. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3652 to the Claim and/or Preliminary Evaluation of Claim 620: 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.[20], 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 Pritchard[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. 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 Klamath Tribes and the BIA as Case 283.

10. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3652. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002).

11. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contest 3322, 3881, and 4010).

12. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

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[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3322. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3652 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3652 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3652 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. The land underlying Claim 620 is within the boundaries of the former Klamath Indian Reservation.

14. The primary purpose of the Tribes' reacquisition of the land underlying Claim 620 is for irrigation. *See* DECLARATION OF ALLEN T. FOREMAN (REVISED EXHIBIT C2) (Nov.13, 2006), admitted into the record November 21, 2006.

15. Based on the Claimants' map (*see* Claim # 620, Page 0013), OWRD finds the point of diversion described in the Settlement Agreement as being located 250 feet East and 165 feet South of the NW corner of the SW¼ NE¼, SECTION 21 is incorrect; the correct description of the location is 250 feet East and 165 feet South of the NW corner of the SW¼ SW¼ NE¼, SECTION 21.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein, with the exception of a scrivener's error; the legal description of the point of diversion is corrected to Lot 22 (SW¼ NE¼), Section 21, T 35 S, R 7 E., W.M., being 250 feet East and 165 feet South of the NW corner of the SW¼ SW¼ NE¼, SECTION 21, as described in Finding 15, above.

2. The Klamath Indian Tribe Restoration Act of August 27, 1986, 25 USC § 566, when combined with the Tribes' reacquisition of the parcel underlying this claim for the primary purpose of irrigation is a valid basis for this claim. The Klamath Indian Tribe Restoration Act provides, among other things, that federal recognition of the Tribes is restored and that "[a]ll rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority…are restored…." 25 USC § 566(b). The Ninth Circuit has held that where a federally recognized Indian tribe reacquires land that was formerly a part of its reservation, the land is treated "in a manner analogous to that of a newly created federal reservation…." *United States v. Anderson*, 736 F2d 1358, 1363 (1984). Water rights for such land are implied to the extent necessary to "fulfill the very purposes for which [the] reservation was created." *Id.* The priority date of any such rights is the date of reacquisition by the Tribes.[23] *Id.* The land underlying Claim 620 is within the boundaries of the former Klamath Indian Reservation, and was acquired for the primary purpose of irrigation. A water right with the priority date of the reacquisition of the land by the Klamath Tribes is recognized for these primary purposes.

[23] The determination of this claim need not and does not address the issue of implied water rights for land acquired by a federally recognized Indian tribe that lies outside the boundaries of its reservation. Nor does the determination of this claim address the issue of implied water rights for privately held land subsequently acquired by the federal government outside the context of a federally recognized Indian tribe's reacquisition of land within the boundaries of its former reservation.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 620 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 620
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 620, PAGE 0013

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

PARCEL: MODOC PUMP STATION

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to the UPPER KLAMATH LAKE

PURPOSE or USE:
IRRIGATION OF 4.8 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE.

RATE OF USE:
0.06 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
1.83 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 5, 1988

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	21	SW NE	22	165 FEET SOUTH AND 250 FEET EAST FROM NW CORNER of the SW ¼, SWNE, SECTION 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICALLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	21	SW NE	22	4.8

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 621

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 INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted a Statement and Proof of Claim (Claim 621) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, and 621.

4. On April 20, 1999, the BIA timely amended Claim 621 to correct the legal description of the place of use.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 621 was denied.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4011 to the Claim and/or Preliminary Evaluation of Claim 621.

7. On May 8, 2000, the BIA timely filed Contest 3882 to the Claim and/or Preliminary Evaluation of Claim 621.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson *et al.*," filed Contest 3323 to the Claim and/or Preliminary Evaluation of Claim 621: Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for

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[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] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3323. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3323. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3323. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] 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; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3323. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3323. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interest to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

9. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3653 to the Claim and/or Preliminary Evaluation of Claim 621: 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.[20], 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 Pritchard[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

10. 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 Klamath Tribes and the BIA as Case 283.

11. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3653. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002).

12. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contest 3323, 3882, and 4011).

13. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

14. The land underlying Claim 621 is within the boundaries of the former Klamath Indian Reservation.

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[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3323. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3323. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3653 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3653 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3653 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. The primary purpose of the Tribes' reacquisition of the land underlying Claim 621 is for commercial use. *See* DECLARATION OF ALLEN T. FOREMAN (REVISED EXHIBIT C2) (Nov.13, 2006), admitted into the record November 21, 2006.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein.

2. The Klamath Indian Tribe Restoration Act of August 27, 1986, 25 USC § 566, when combined with the Tribes' reacquisition of the parcel underlying this claim for the primary purpose of commercial use, is a valid basis for this claim. The Klamath Indian Tribe Restoration Act provides, among other things, that federal recognition of the Tribes is restored and that "[a]ll rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority...are restored...." 25 USC § 566(b). The Ninth Circuit has held that where a federally recognized Indian tribe reacquires land that was formerly a part of its reservation, the land is treated "in a manner analogous to that of a newly created federal reservation...." *United States v. Anderson*, 736 F2d 1358, 1363 (1984). Water rights for such land are implied to the extent necessary to "fulfill the very purposes for which [the] reservation was created." *Id.* The priority date of any such rights is the date of reacquisition by the Tribes.[23] *Id.* The land underlying Claim 621 is within the boundaries of the former Klamath Indian Reservation, and was acquired for the primary purpose of commercial use. A water right with the priority date of the reacquisition of the land by the Klamath Tribes is recognized for these primary purposes.

3. Based on the file and record herein, IT IS ORDERED that Claim 621 is approved as set forth in the following Water Right Claim Description.

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[23] The determination of this claim need not and does not address the issue of implied water rights for land acquired by a federally recognized Indian tribe that lies outside the boundaries of its reservation. Nor does the determination of this claim address the issue of implied water rights for privately held land subsequently acquired by the federal government outside the context of a federally recognized Indian tribe's reacquisition of land within the boundaries of its former reservation.

[Beginning of Water Right Claim Description]

CLAIM NO. 621
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 621, MYLAR MAP FILED APRIL 21, 2006

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

PARCEL: CASINO

SOURCE OF WATER: WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE or USE:
COMMERCIAL USE FOR MAINTENANCE OF FIRE SUPPRESSION SYSTEM;
USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE

RATE OF USE: 0.27 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION

DUTY: 3.7 ACRE-FEET PER YEAR

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 30, 1996

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	16	NE SE	22	500 FEET SOUTH AND 405 FEET WEST FROM NE CORNER, NESE, SECTION 16

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	16	NE SE	22
35 S	7 E	WM	16	NW SE	23
35 S	7 E	WM	16	NW SE	28
35 S	7 E	WM	16	SW SE	33

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION Water Right Claim 622 (Upper Klamath Lake)

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 616 and 622, (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[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 286.

2. Claim 616 was filed by the Klamath Tribes. It is a claim that incorporates by reference the United States Bureau of Indian Affairs' Claim 622 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 616 and 622 on April 16, 2012.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, (2) Upper Basin Contestants, (3) Mathis Family Trust, and (4) Joint Limited by Klamath Tribes, United States and Klamath Project Water Users (KPWU). Responses to exceptions were timely filed by the United States, the Klamath Tribes and the Mathis Family Trust.

[1] Claim 616: 2062, 2731, 2741, 3020, 3123, 3253, 3318, 3648, 4006; Claim 622: 2063, 2732, 2742, 3021, 3254, 3318, 3324, 3654, 3883, 4012

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 616 and 622. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Section A.9, below.

6. For administrative convenience, OWRD has addressed Claim 616 in a separate Partial Order of Determination for Claim 616. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 616 and the United States' Claim 622, 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 in its entirety. In addition, Finding of Fact #41 is added as set forth in Section A.8, below.
   f. The "Conclusions of Law" is adopted in its entirety.
   g. The "Opinion" is adopted with modifications, as set forth in Section A.9 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 Claim 622. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
   i. The "Amended Order on Stipulation" is adopted as described in Section A.10, below.

8. **Findings of Fact**. Finding of Fact #41 is added as follows:

   41. OWRD describes the place of use for Claim 622 as Upper Klamath Lake and Agency Lake being within portions of the following locations:

   Township 34 South, Range 7.5 East, W.M.
   Township 35 South, Range 7.0 East, W.M.
   Township 35 South, Range 7.5 East, W.M.
   Township 36 South, Range 6.0 East, W.M.
   Township 36 South, Range 7.0 East, W.M.
   Township 36 South, Range 7.5 East, W.M.
   Township 37 South, Range 7.0 East, W.M.
   Township 37 South, Range 8.0 East, W.M.
   Township 38 South, Range 8.0 East, W.M.
   Township 38 South, Range 9.0 East, W.M.

   OWRD Ex. 1 at 161 (map dated 10-1-1999 submitted with amended claim).

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

a. *Introductory Paragraphs:* The first two paragraphs of the Opinion Section are replaced in their entirety as follows:

> Claimants seek to maintain water levels within Upper Klamath Lake, which forms the western border of the former reservation. To succeed, Claimants must demonstrate that they are entitled, both legally and factually, to the claimed water uses. To do this, Claimants must show that the water right claimed is a type that is within the scope of the federal reserved water right doctrine, that the right was implied at the time of signing the Treaty and that such water is necessary to accomplish a primary purpose of the reservation created by the Treaty of 1864.

b. *Section I*: The second paragraph of Section I is deleted in its entirety. The remainder of Section I is incorporated without modification.

c. *Sections II through IV*: These sections are incorporated without modification.

d. *Section V*: This section is replaced in its entirety as follows:

> *V. Upper Klamath Lake serves as a boundary for the former Klamath Indian Reservation; applicable precedent establishes that federal reserved water rights may be recognized for waters bordering federal reservations.*
>
> Upper Klamath Lake is listed in Klamath Treaty of 1864's ("Treaty") description of the boundaries of the former Klamath Indian Reservation ("Reservation"). Article 1 of the Treaty describes the applicable portion of the boundary as follows: "Beginning upon the eastern shore of the middle Klamath lake, at the Point of Rocks, about twelve miles below the mouth of Williamson's River; thence following up said eastern shore to the mouth of Wood River…."
>
> There is support in the case law for treating waters bordering Indian reservations as eligible for federal reserved water rights, assuming the other elements for such a right exist. *See United States v. Rio Grande Dam & Irrig. Co.,* 174 US 690, 703 (1899); *Winters v. United States*, 207 US 564, 565-567 (1908); *United States v. Ahtanum Irrig. Dist.,* 236 F2d 321, 325 (9th Cir 1956), *cert den* 352 US 988 (1957). As a result, OWRD concludes that the Claimants' claims for lake elevation levels on Upper Klamath Lake are not foreclosed by Upper Klamath Lake's boundary status.
>
> The Proposed Order did not consider the caselaw permitting federal reserved water rights for waters bordering federal reservations. Instead, the Proposed Order incorrectly concluded that the federal reserved water right doctrine is broad enough to allow water rights in off-reservation stream reaches and bodies of water, no matter how distant from the land reserved. Because Upper

Klamath Lake borders a part of the former Reservation, and because there is caselaw supporting federal reserved water rights for bordering waters, it is unnecessary to address the off-reservation federal reserved water right issue in this case.

e. *Sections VI through XI*: These sections are incorporated without modification.

10. Amended Order on Stipulation.

On June 19, 2009, the ALJ entered an Order on Klamath Tribes, United States, and Klamath Project Water Users' Stipulation of Conditional Withdrawal of KPWU's Contests to Claims 616 and 622 and Conditional and Interim No-Call Provisions by the United States and Klamath Tribes ("Order on Stipulation"). The Order on Stipulation provided that certain of its terms "shall be included in the Proposed Order issued under ORS 183.464(1) and OAR 137-003-0645 and any other Order or Judgment determining" the enumerated claims and contests.

On April 11, 2012, the United States filed the following documents:

AMENDED STIPULATION OF CONDITIONAL WITHDRAWAL OF KWPU'S CONTESTS TO CLAIMS 616 AND 622 AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES AND ATTACHMENTS 1 AND 2 ("Amended Stipulation");

JOINT MOTION FOR APPROVAL OF AMENDED STIPULATION OF CONDITIONAL WITHDRAWAL OF KPWU'S CONTESTS TO CLAIMS 616 AND 622 AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES; and

[PROPOSED] ORDER ON KLAMATH TRIBES, UNITED STATES, AND KLAMATH PROJECT WATER USERS' AMENDED STIPULATION OF CONDITIONAL WITHDRAWAL OF KPWU'S CONTESTS TO CLAIMS 616 AND 622 AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES.

The Amended Stipulation is an agreement between Claimants (the Klamath Tribes and the United States), Contestants Klamath Project Water Users ("KPWU"), and the Oregon Water Resources Department ("OWRD"). The Amended Stipulation is comprised of five sections. Section A is a stipulation of facts. Section B provides for the conditional withdrawal of KPWU's contests in this case. Section C provides for a conditional limitation on the exercise of the water rights recognized in this case. Section D requests the ALJ to enter a proposed order implementing the Amended Stipulation. Section E provides general terms pertaining to the Amended Stipulation.

On April 24, 2012, the ALJ entered the Order on Klamath Tribes, United States, and Klamath Project Water Users' Amended Stipulation of Conditional Withdrawal of KPWU's Contests to Claims 616 and 622 and Conditional and Interim No-Call

Provisions by the United States and Klamath Tribes ("Order on Amended Stipulation"). The Order on Amended Stipulation is intended to implement the Amended Stipulation. The Order on Amended Stipulation supersedes and replaces the Order on Stipulation.

The Amended Order on Stipulation states that certain of its terms "shall be included in the Proposed Order on Claims 616 and 622." However, the Proposed Order does not explicitly include those terms or otherwise reference the Amended Order on Stipulation.

To provide clarity as to the status of the Order on Amended Stipulation, the Adjudicator adopts the Order on Amended Stipulation[2] and incorporates into this Partial Order of Determination the relevant terms, as follows:

1. Regarding Contests 3648 and 3654 filed by KPWU,[3] the following terms are a part of this Partial Order of Determination.

    a. Subject to paragraph 1.b, KPWU may file exceptions in the Circuit Court to the Findings of Fact and Order of Determination on Claims 616 and 622, consistent with ORS 539.150. Nothing in the Amended Stipulation or this "Amended Order on Stipulation" section of this Partial Order of Determination shall limit the exceptions which the United States, the Klamath Tribes and KPWU (collectively, the "Parties to the Amended Stipulation") may pursue or oppose in the Circuit Court, or the use they may make of the Findings of Fact and Order of Determination on Claims 616 and 622 in the Circuit Court, provided that any exception filed by KPWU must not be inconsistent with the CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003, Attachment 2 to the 2009 STIPULATION OF CONDITIONAL WITHDRAWAL OF KPWU'S CONTESTS TO CLAIMS 616 AND 622 AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES ("2009 Stipulation"). The Parties to the Amended Stipulation have, and have had since the entry of the 2009 Stipulation, no further discovery obligations regarding each other during the contested case process before the Office of Administrative Hearings or OWRD.

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[2] Even if the ALJ erred in failing to reference or incorporate the Amended Order on Stipulation in the Proposed Order, OWRD has the authority, which the Adjudicator hereby exercises, to incorporate terms of the Amended Order into this Partial Order of Determination. OAR 137-003-0665; 137-003-0655. The Claimants properly raised this issue in exceptions to which Contestants had an opportunity to respond.

[3] For purposes of this Order, Klamath Project Water Users include Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland Improvement District, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Randy Walthall and Inter-County Title Co., Inter-County Properties Co., Randolph and Jane Walthall 1995 Trust, Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Collins Products LLC and Plevna District Improvement Company.

b. If none of the events described in paragraph 2.c.i have occurred and the Secretary publishes the notice under section 15.3.4.A of the KLAMATH BASIN RESTORATION AGREEMENT FOR THE SUSTAINABILITY OF PUBLIC AND TRUST RESOURCES AND AFFECTED COMMUNITIES ("Restoration Agreement") (including a notice under section 15.3.4.A following its amendment as provided in section 15.3.4.B of the Restoration Agreement, as applicable), KPWU shall refrain from filing exceptions to the Findings of Fact and Order of Determination or, if exceptions to the Findings of Fact and Order of Determination have already been filed, timely cease any litigation on exceptions and file the necessary pleading to dismiss their exceptions and the conditional withdrawal by KPWU of their Contests 3648 and 3654 shall become permanent and no longer conditional.

2. Regarding Claims 616 and 622, the following terms are a part of this Partial Order of Determination.

   a. From the time the Amended Stipulation was filed until the On Project Plan Implementation Deadline, any exercise of the water rights determined for Claims 616 and 622 (the "Tribal Water Rights") shall not result in regulation curtailing use of water under any water rights having a priority date before August 9, 1908.

   b. After the On Project Plan Implementation Deadline, any exercise of the water rights determined for Claims 616 and 622 shall not result in regulation curtailing use of water under any water rights having a priority date before August 9, 1908, except that the exercise of the water rights determined for Claims 616 and 622 may seek regulation such that DIVERSION (as defined in Appendix E-1 of the Restoration Agreement) is equal to the maximum DIVERSION that can occur if Appendix E-1 of the Restoration Agreement has been filed and is in effect. The exception that applies under this paragraph 2.b applies at all times after the On Project Plan Implementation Deadline, regardless of whether Appendix E-1 has in fact been filed and is in effect at that time.

   c. If the following events have all occurred, the conditional limitations on the exercise of the Tribal Water Rights set out in paragraph 2.a and paragraph 2.b above shall cease and be of no further force or effect:

      i. The Restoration Agreement has terminated without the Secretary of the Interior having published a notice under either section 15.3.4.A or 15.3.4.C of the Restoration Agreement, or the Secretary of the Interior has published the notice in the Federal Register described in section 15.3.4.C of the Restoration Agreement, or the Klamath Tribes have withdrawn from the Restoration Agreement under section 33.2.2 of the Restoration Agreement; and

ii. KPWU have fully litigated the Parties to the Amended Stipulation's exceptions to the Findings of Fact and Order of Determination for Claims 616 and 622 consistent with the processes described in section 15.3.2.B.ii.b of the Restoration Agreement or have foregone their final opportunity to fully litigate the Parties to the Amended Stipulation's exceptions pursuant to such processes; and

iii. Following KPWU's litigation of exceptions as provided in paragraph 2.c.ii immediately above or following KPWU having foregone the final opportunity to fully litigate exceptions as provided in paragraph 2.c.ii immediately above, a judgment or decree (or amended judgment or decree) has been issued regarding Claims 616 and 622 under ORS 539.150(4) or 539.190 and is operative.

d. If none of the events described in paragraph 2.c.i have occurred and the Secretary publishes the notice described in section 15.3.4.A of the Restoration Agreement (including a notice under section 15.3.4.A following its amendment as provided in section 15.3.4.B of the Restoration Agreement, as applicable), then the conditional limitations on the exercise of the Tribal Water Rights set out in paragraph 2.a and paragraph 2.b above shall become permanent and unconditional.

e. For purposes of this paragraph 2, "On Project Plan Implementation Deadline" means the applicable deadline for full and complete implementation of the On Project Plan as established under sections 15.3.8.A or 15.3.8.B of the Restoration Agreement.

In addition to the incorporation of these terms, the Adjudicator makes the following findings with respect to the incorporated terms:

1. The provisions in paragraph 2.a. and paragraph 2.b, above, limit the scope or extent of a call made by the Klamath Tribes and United States under the water right that has been determined under Claims 616 and 622. Such provisions do not change the principle that any regulation by OWRD curtailing use of water shall be as provided in ORS 540.045(1)(a), based on the priority of regulated rights, with the latest priority right curtailed first.

2. Nothing in the Amended Stipulation diminishes, affects, defines, or resolves in any way: (a) the rights of Contestants other than KPWU to contest or oppose Claims 616 and 622; or (b) any contests other than Contests 3648 and 3654; or (c) any other claims of the Claimants. Nothing in the Amended Stipulation diminishes, affects, defines, or resolves in any way any other water rights or any other claim, contest, or case in the Klamath Basin Adjudication. In addition, nothing in the Amended Stipulation defines, or is intended to define, the scope and attributes of the Tribal Water Rights, either to satisfy the Tribes' treaty rights or otherwise.

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 in its entirety. In addition, Finding of Fact #41 is added as set forth in Section A.8, above.
   f. The "Conclusions of Law" is adopted in its entirety.
   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 Claim 622. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
   i. The "Amended Order on Stipulation" is adopted as described in Section A.10, above.

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 616 incorporates the United States' Claim 622 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 616 is denied. Claim 616 is addressed in a separate Partial Order of Determination for Claim 616 and the United States' Claim 622 is determined in this Partial Order of Determination for Claim 622.

3. Based on the file and record herein, IT IS ORDERED that Claim 622 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 622

CLAIM MAP REFERENCE: CLAIM # 622, AMENDED MAPS PAGES 30-38

CLAIMANT: 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: UPPER KLAMATH LAKE, tributary to KLAMATH RIVER

PURPOSE or USE:

MINIMUM LAKE LEVELS IN UPPER KLAMATH LAKE 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 MINIMUM LAKE WATER LEVELS:

UPPER KLAMATH LAKE IS TO BE MAINAINED AT THE FOLLOWING MINIMUM LEVELS AS DETERMINIED BY ELEVATION ABOVE MEAN SEA LEVEL:

ELEVATION OF LAKE SURFACE

MONTH	MINIMUM LAKE LEVELS (IN FEET ABOVE MEAN SEA LEVEL)
January 1 – March 31	Consistent with flood control purposes, raise elevation as quickly as possible to 4143.0 by March 31
April 1 – June 15	4143.0
June 16 – June 30	4142.0
July 1 – July 15	4141.5
July 16 – August 15	4140.5
August 16 – October 15	4139.5
October 16 – November 30	4140.5
December 1 – December 31	4141.0

DATE OF PRIORITY: TIME IMMEMORIAL

PLACE OF USE:

UPPER KLAMATH LAKE AND AGENCY LAKE LOCATED WITHIN PORTIONS OF THE FOLLOWING LOCATIONS:

Twp	Rng	Mer
34 S	7.5 E	WM
35 S	7.0 E	WM
35 S	7.5 E	WM
36 S	6.0 E	WM
36 S	7.0 E	WM
36 S	7.5 E	WM
37 S	7.0 E	WM
37 S	8.0 E	WM
38 S	8.0 E	WM
38 S	9.0 E	WM

End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION
	)	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[1] 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 623. The exceptions are not found to be persuasive and therefore, no modifications are made to the Proposed Order.

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

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., Sections1-17, 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, 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 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 DETERMINIED 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 March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 624 (Seeps and Springs)

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 614 and 624, (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[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 285.

2. Claim 614 was filed by the Klamath Tribes. It is a claim that incorporates by reference the United States Bureau of Indian Affairs' Claim 624 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 614 and 624 on December 1, 2011.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, (2) Upper Basin Contestants, and (3) John M. Mosby and Marilyn Mosby. Responses to exceptions were timely filed by the United States and the Klamath Tribes.

[1] Claim 614: 2062, 3018, 3121, 3251, 3316, 3646, 4004; Claim 624: 3023, 3256, 3326, 3656, 3885, 4014

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 614 and 624. 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, A.10, and A.11, below.

6. For administrative convenience, OWRD has addressed Claim 614 in a separate Partial Order of Determination for Claim 614. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 614 and the United States' Claim 624, 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 this Partial Order of Determination for Claims 614 and 624. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9, A.10 and A.11, below, the outcome of the Order has been modified (1) to correct the monthly flow values for 18 springs, and (2) to correct location information for four springs.
   i. The "Attachment A" is adopted with modifications as set forth in Section A.11 below.

8. **Findings of Fact**. Within the Proposed Order's "Findings of Fact" section, a new Finding of Fact 26 is added as follows:

   26. A letter sent by OWRD to the Claimants prior to the claim filing deadline states that "[c]laimants will not be allowed to make an additional claim to water by enlarging their original claim after the April 30, 1997, claiming deadline." Letter from A. Reed Marbut to Carl Ullman, dated April 25, 1997, OWRD Ex. 1, pgs. 6-7. The Claimants were therefore aware, prior to the claim filing deadline, that OWRD would not allow increases in the quantity of water claimed after the claim filing deadline.

9. **Conclusions of Law**. Within the Proposed Order's "Conclusions of Law" section, Conclusion of Law 2 is replaced in its entirety as follows:

   2. Increases in the quantity of water claimed by Claimants in their Amended Claims filed October 1, 1999 are prohibited by ORS 539.210.

The remainder of the Conclusions of Law are incorporated without modification.

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 III of the Opinion is replaced in its entirety as follows:

III. Amended claims.

Through contest amendments and closing briefs, Contestants argue Claimants' amended claims, filed October 1, 1999, are impermissible because they expand on the initial claims and therefore constitute new claims under the Department's interpretation of the terms "amendment" and "new matter." OWRD asserts, in closing briefs, that because no extension beyond the April 30, 1997 deadline was granted by the Department, those amended claims for increased flows constitute impermissible new claims rather than permissible amended claims. Claimants rely on the 1998 letter from OWRD, as well as the Department's position in other cases throughout this adjudication, to support their position that claim amendments were permissible until the commencement of the open inspection period. The parties each rely, to varying degrees, on ORS 539.210, OAR 690-030-0085, and OAR 690-028-0065 to support their arguments. Claimants also argue that this issue has been addressed by ALJ Russell in the Amended Order.

As a preliminary matter, it is important to note that, while ALJ Russell did address this argument in the Amended Order, he did not dispose of the contest raised by UBC. Rather, ALJ Russell simply refused to summarily dismiss Claimants' amended claims or limit such claims to the amounts reflected in the initial claim. For that reason, the arguments raised by Contestants and OWRD must be addressed in this order.

OWRD incorporates its GENERAL CONCLUSIONS OF LAW CONCERNING CLAIM AMENDMENTS. In addition, OWRD addresses certain conclusions reached in the Proposed Order and certain arguments made by the Claimants in their closing briefing and responses to exceptions.

The Proposed Order's allowance of upward claim amendments after the claim-filing deadline is based on (1) an interpretation of ORS 539.210 and OAR 690-030-0085, and (2) a letter sent by OWRD to Claimants in 1998, which the Proposed Order interprets as allowing upward amendments of the claims at issue.

A. The Proposed Order incorrectly interprets ORS 539.210 and OAR 690-030-0085

The Proposed Order concludes that upward amendments must be allowed after the claim-filing deadline, because not doing so would be inconsistent with OAR 690-030-0085. OAR 690-030-0085 provides, in relevant part:

(1)***[T]he Water Resources Director (Director) may not permit any alteration or amendment of the original claim after the period for inspection has commenced, but any new matter that the claimant may wish to set forth must be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Director prior to the close of the period for public inspection.

OWRD interprets OAR 690-030-0085 to mean that partial withdrawals of claims (including any downward adjustments of claim terms) are not "alteration[s] or amendment[s] of the original claim" and are thus permissible after the beginning of open inspection.

OWRD also concludes that ORS 539.210 prohibits certain increases in claim terms after the claim-filing deadline, because the increases are significant enough to constitute "new" claims – claims not made "at the time and in the manner required by law" – that are time-barred by ORS 539.210.[2] Therefore, some changes to claims are prohibited by statute even prior to the beginning of the period for inspection.

The Proposed Order concludes that OWRD's interpretations of OAR 690-030-0085 and ORS 539.210 are inconsistent with the wording of OAR 690-030-0085, because OAR 690-030-0085 "implies" that claim amendments are permissible prior to the beginning of the period for public inspection. The Proposed Order also concludes that OWRD's interpretations effectively render OAR 690-030-0085 meaningless, because the rule does not prohibit the downward amendment of claims, and because the rule does not appear to the ALJ

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[2] ORS 539.210 provides:

> Whenever proceedings are instituted for determination of rights to the use of any water, it shall be the duty of all claimants interested therein to *appear and submit proof of their respective claims, at the time and in the manner required by law*. Any claimant who fails to appear in the proceedings and submit proof of the claims of the claimant shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings, and shall be held to have forfeited all rights to the use of the water theretofore claimed by the claimant.

(Emphasis added). To provide certainty to water users, ORS 539.210 requires that prospective claimants in an adjudication appear and define their claims "at the time and in the manner required by law," or be barred from asserting claims in the future. Many of the attributes that make up a water right, such as the quantity of water, the season of use, and the priority date, can result in the use of water by a right holder to the exclusion of other, junior right holders. When a claimant attempts to increase the terms of one of these attributes, that claimant is effectively making a "new" claim for water use – by claiming water use that was not covered by the original claim and that could have an effect on the use of water by other users. The statutes and rules governing the adjudication require claimants to identify these terms by a deadline specified by OWRD. OWRD considers that identifying the amount of water claimed is part of the "manner" required by law. OWRD therefore interprets ORS 539.210 to mean that a claimant who subsequently attempts to increase the claimed amount of water has failed to make this "new" claim for water use in the time and manner required by law, and is barred from doing so by ORS 539.210.

to prohibit any upward amendments of claims that are not already prohibited by ORS 539.210.

First, by its own terms OAR 690-030-0085 is not a grant of authority to make any particular "alteration or amendment of the original claim." It is a *prohibition* on any such "alterations" or "amendments" after the beginning of the period for public inspection. OWRD's interpretation of ORS 539.210 therefore does not prohibit any changes to claims that OAR 690-030-0085 requires OWRD to permit, and that interpretation cannot be said to be inconsistent with the terms of the rule.

Second, ORS 539.210's prohibition on untimely "new" claims does not deprive OAR 690-030-0085 of all meaning. OWRD interprets ORS 539.210 to mean that adjudication claimants may amend their claims after the claim filing deadline by making certain modifications to the location of a place of use, for example, without increasing the overall size of the place of use. Claimants may also make changes to the location of a point of diversion or increase the number of claimed points of diversion, as long as the overall claimed quantity of water does not increase. None of these amendments to claims result in a "new" claim of water use that was not made "at the time and in the manner required by law."

Because OWRD's interpretation of OAR 690-030-0085 is not inconsistent with "the wording of the rule itself, or with the rule's context, or with any other source of law...", the interpretation is entitled to deference. *Don't Waste Oregon Com. v. Energy Facility Siting Council*, 320 Or 132, 142 (1994). The Claimants' upward amendments to the quantity of water claimed are time-barred "new" claims and must be denied.

B. OWRD's December 16, 1998 letter does not permit the increases in the claimed quantity of water at issue in this case

The Proposed Order concludes that a letter sent by OWRD to the Claimants in 1998 allows the Claimants to increase the claimed quantity of water for the claims at issue in this case. The relevant portion of the letter states: "[t]he Department does not intend to close the amendment period before the commencement of open inspection, and will accept claim amendments for filing until the close of business on the day before the commencement of open inspection." Letter from Dick Bailey, Adjudicator, to Michael Gheleta, federal attorney, dated December 16, 1998, Ex. J to the Affidavit of David W. Harder, dated April 18, 2011.

This language does nothing but reiterate the language in OAR 690-030-0085. It does not describe what constitutes a permissible amendment, or otherwise interpret the term "amendment." The Claimants were entitled to file amended claims up until the "close of business on the day before the commencement of open inspection," *provided* that the amendments made were allowable under ORS

539.210. As described above, an upward amendment to the claimed quantity of water is not an allowable amendment under ORS 539.210.

In addition to inappropriately relying on the 1998 letter, the Proposed Order ignores a letter sent by OWRD to the Claimants prior to the claim filing deadline, which states that "[c]laimants will not be allowed to make an additional claim to water by enlarging their original claim after the April 30, 1997, claiming deadline." Letter from A. Reed Marbut to Carl Ullman, dated April 25, 1997, OWRD Ex. 1, pgs. 6-7. The Claimants were aware, prior to the claim filing deadline, that OWRD would not allow increases in the quantity of water claimed after the claim filing deadline. OWRD's position has not changed. ORS 539.210 has not changed. The Proposed Order erred in allowing the upward amendments.

The remainder of the Opinion section is incorporated without modification.

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.** The table identified as "Table 3" in Attachment A to the Proposed Order is modified as follows (additions are shown in underline text; deletions are shown in ~~strikethrough~~ text):

Applegate Butte			
Site # 194	Miranda Spring	~~0.022 cfs~~	0.005 cfs
Buckhorn Springs			
Site # 84	Buckhorn Spring	~~0.005 cfs~~	0.0022 cfs
Fort Klamath			
Site # 11014	Unnamed Spring	~~23.0 cfs~~	0.1 cfs
Site # 11015	Unnamed Spring	~~4.2 cfs~~	0.1 cfs
Round Butte			
Site # 40	Marv Stump	~~0.005 cfs~~	0.0045 cfs
S'Ocholis Canyon			
Site # 7018	Unnamed Spring	~~0.11 cfs~~	0.005 cfs
Sun Pass			
Site # 298	Egan Spring	~~0.196 cfs~~	0.1215 cfs
Swan Lake Point			
Site # 7203	Unnamed Spring	~~0.1 cfs~~	0.005 cfs
Site # 7205	Unnamed Spring	~~0.15 cfs~~	0.005 cfs
Site # 7206	Unnamed Spring	~~0.22 cfs~~	0.005 cfs
Site # 7208	Unnamed Spring	~~0.07 cfs~~	0.005 cfs

Site # 7210	Unnamed Spring	~~0.006 cfs~~	0.005 cfs
Site # 7211	Unnamed Spring	~~0.006 cfs~~	0.005 cfs
Site # 7212	Unnamed Spring	~~0.0064 cfs~~	0.005 cfs
Wocus Bay			
Site # 55	Dice Crane	~~0.01 cfs~~	0.005 cfs
Yainax Butte			
Site # 3462	John Spring	~~0.2 cfs~~	0.0446 cfs
Yamsey Mountain			
Site # 7463	Unnamed Spring	~~0.2 cfs~~	0.1 cfs
Site # 7464	Unnamed Spring	~~0.2 cfs~~	0.1 cfs

Chiloquin			
Site # 6239	Unnamed Spring	~~35S, 8E, 6, NWNW~~	35S, 8E, 8, SENE
Spodue Mountain			
Site # 7046	Elde Flat	~~34S, 12E, 28, NWNW~~	34S, 12E, 19, NESE
Site # 7047	Blue Creek	~~34S, 12E, 21, SWSE~~	34S, 12E, 28, NWNW
Site # 7048	Unnamed Spring	~~34S, 12E, 26, NENW~~	34S, 12E, 21, SWSE

Reason for Modification: To limit the approved flow quantities to those claimed by the United States on April 30, 1997; to correct certain spring locations based on the evidence in the record.

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.8, above.
   f. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.9, above.
   g. The "Opinion" is adopted with modifications, as set forth in Section A.10 above.
   h. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claims 614 and 624. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 A.10, and A.11 above, the outcome of the Order has been modified (1) to correct the

monthly flow values for 18 springs and (2) to correct location information for four springs.

i. The" Attachment A" is adopted with modifications as set forth in Section A.11, above.

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 614 incorporates the United States' Claim 624 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 614 is denied in a separate Partial Order of Determination for Claim 614, and the United States' Claim 624 is determined in this Partial Order of Determination for Claim 624.

3. Based on the file and record herein, IT IS ORDERED that Claim 624 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 624

CLAIM MAP REFERENCE: AMENDED MAPS CLAIM # 624, PAGES 116 through 148

CLAIMANT: 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

PURPOSE or USE:
SEEPS AND SPRINGS USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: TIME IMMEMORIAL

RATE OF USE: THE RATE OF USE IS AS FOLLOWS, NOT TO EXCEED A TOTAL OF 2.633 CUBIC FEET PER SECOND (CFS):

THE SOURCES OF WATER, DATES OF PRIORITY, RATE OF USE (CFS), AND POINTS OF DIVERSION AND PLACE OF USE LOCATIONS ARE AS FOLLOWS:

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
APPLEGATE BUTTE (AMENDED MAP CLAIM # 624, PAGE 117)									
174	Unnamed Spring	Hog Creek	0.0010	33 S	9 E	WM	7	SE SE	NORTH 52 DEGREES 34 MINUTES 5 SECONDS WEST, 1049 FEET FROM SE CORNER, SECTION 7[3]
194	Miranda Spring	Sprague River	0.0050	34 S	9 E	WM	7	SE SE	NORTH 0 DEGREES 30 MINUTES 54 SECONDS WEST, 785 FEET FROM SE CORNER, SECTION 7
6000	Beaver Dam Spring	Hog Creek	0.0050	33 S	9 E	WM	3	NE SW	NORTH 42 DEGREES 51 MINUTES 11 SECONDS EAST, 2741 FEET FROM SW CORNER, SECTION 3
6008	Unnamed Spring	Hog Creek	0.0050	33 S	9 E	WM	8	SE SE	NORTH 26 DEGREES 52 MINUTES 22 SECONDS WEST, 1276 FEET FROM SE CORNER, SECTION 8

[3] All Bearing and Distances are based on NAD 27, Zone 10

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
9050	Unnamed Spring	Hog Creek	0.0600	33 S	9 E	WM	7	SW SE	NORTH 89 DEGREES 53 MINUTES 18 SECONDS WEST, 2130 FEET FROM SE CORNER, SECTION 7
BEAR BUTTE (AMENDED MAP CLAIM # 624, PAGE 118)									
340	Dealy Spring	Dealy Creek	0.0040	29 S	11 E	WM	29	SW SE	NORTH 62 DEGREES 26 MINUTES 4 SECONDS WEST, 2358 FEET FROM SE CORNER, SECTION 29
344	Unnamed Spring	Doe Creek	0.0008	29 S	10 E	WM	25	NW NW	SOUTH 41 DEGREES 36 MINUTES 52 SECONDS EAST, 930 FEET FROM NW CORNER, SECTION 25
BEATTY (AMENDED MAP CLAIM # 624, PAGE 119)									
6171	Unnamed Spring	East Branch Whiskey Creek	0.0010	37 S	12 E	WM	10	SW NW	SOUTH 25 DEGREES 24 MINUTES 7 SECONDS EAST, 2098 FEET FROM NW CORNER, SECTION 10
BUCKHORN SPRINGS (MAP CLAIM # 624, PAGE 120)									
84	Buckhorn Spring	Telephone Draw	0.0022	32 S	10 E	WM	22	NW NW	SOUTH 83 DEGREES 41 MINUTES 46 SECONDS EAST, 369 FEET FROM NW CORNER, SECTION 22
85	Unnamed Spring	Haystack Draw	0.0050	32 S	10 E	WM	22	NW SW	NORTH 17 DEGREES 11 MINUTES 55 SECONDS EAST, 1941 FEET FROM SW CORNER, SECTION 22
87	Unnamed Spring	Bull Pasture Draw	0.0050	32 S	10 E	WM	27	NE SE	NORTH 5 DEGREES 57 MINUTES 2 SECONDS WEST, 2259 FEET FROM SE CORNER, SECTION 27
6194	Telephone Draw	Haystack Draw	0.0020	32 S	10 E	WM	16	NE SW	NORTH 52 DEGREES 49 MINUTES 50 SECONDS EAST, 3089 FEET FROM SW CORNER, SECTION 16
11002	Corral Spring	Skellock Draw	0.0050	31 S	9 E	WM	23	SW NE	SOUTH 44 DEGREES 22 MINUTES 3 SECONDS WEST, 1963 FEET FROM NE CORNER, SECTION 23
BUTTES OF THE GODS (AMENDED MAP CLAIM # 624, PAGE 121)									
6209	Unnamed Spring	Sprague River	0.0010	35 S	9 E	WM	23	NW SW	NORTH 2 DEGREES 0 MINUTES 6 SECONDS EAST, 2032 FEET FROM SW CORNER, SECTION 23

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
CALIMUS BUTTE (AMENDED MAP CLAIM # 624, PAGE 122)									
431	North Calimus Spring	Sprague River	0.0020	34 S	9 E	WM	2	SW NE	SOUTH 33 DEGREES 17 MINUTES 10 SECONDS WEST, 2690 FEET FROM NE CORNER, SECTION 2
6214	Unnamed Spring	Hog Creek	0.0010	33 S	9 E	WM	11	NE SE	NORTH 16 DEGREES 1 MINUTE 51 SECONDS WEST, 2590 FEET FROM SE CORNER, SECTION 11
6215	Unnamed Spring	Hog Creek	0.0050	33 S	9 E	WM	14	NE NE	SOUTH 41 DEGREES 30 MINUTES 12 SECONDS WEST, 500 FEET FROM NE CORNER, SECTION 14
6216	Unnamed Spring	Hog Creek	0.0050	33 S	9 E	WM	13	SW SE	NORTH 58 DEGREES 13 MINUTES 30 SECONDS WEST, 2154 FEET FROM SE CORNER, SECTION 13
6218	Unnamed Spring	Sprague River	0.0020	33 S	9 E	WM	36	SE NE	SOUTH 34 DEGREES 27 MINUTES 0 SECONDS WEST, 2020 FEET FROM NE CORNER, SECTION 36
6221	Unnamed Spring	Sprague River	0.0050	34 S	9 E	WM	3	NE NE	SOUTH 26 DEGREES 57 MINUTES 10 SECONDS WEST, 1542 FEET FROM NE CORNER, SECTION 3
6222	Unnamed Spring	Sprague River	0.0050	34 S	9 E	WM	3	NE SE	NORTH 1 DEGREE 26 MINUTES 52 SECONDS WEST, 1902 FEET FROM SE CORNER, SECTION 3.
6223	Unnamed Spring	Sprague River	0.00006	34 S	9 E	WM	11	NW NW	SOUTH 25 DEGREES 7 MINUTES 50 SECONDS EAST, 1157 FEET FROM NW CORNER, SECTION 11
11011	Flowing Well Spring	Bull Pasture Draw	0.0050	32 S	10 E	WM	32	SE SE	NORTH 80 DEGREES 24 MINUTES 4 SECONDS WEST, 730 FEET FROM SE CORNER, SECTION 32
11012	Unnamed Spring	Williamson River	0.0050	33 S	10 E	WM	28	SE NW	SOUTH 51 DEGREES 16 MINUTES 8 SECONDS EAST, 2713 FEET FROM NW CORNER, SECTION 28
CHILOQUIN (AMENDED MAP CLAIM # 624, PAGE 123)									
185	Grouse Spring	Copperfield Creek	0.0020	35 S	8 E	WM	21	NE NW	SOUTH 84 DEGREES 46 MINUTES 55 SECONDS EAST, 1705 FEET FROM NW CORNER, SECTION 21
189	Crystal Castle Spring	Sprague River	0.0050	35 S	8 E	WM	7	SW SW	NORTH 35 DEGREES 37 MINUTES 10 SECONDS EAST, 876 FEET FROM SW CORNER, SECTION 7

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
6238	Unnamed Spring	Sprague River	0.0006	35 S	8 E	WM	5	NW SW	NORTH 25 DEGREES 45 MINUTES 4 SECONDS EAST, 2142 FEET FROM SW CORNER, SECTION 5
6239	Unnamed Spring	Copperfield Creek	0.0020	35 S	8 E	WM	8	SE NE	SOUTH 8 DEGREES 42 MINUTES 45 SECONDS WEST, 2564 FEET FROM NE CORNER, SECTION 8
COOKS MOUNTAIN (AMENDED MAP CLAIM # 624, PAGE 124)									
125	Dibbor-Cook Spring	Cooks Canyon	0.0050	35 S	10 E	WM	12	NW SE	NORTH 29 DEGREES 3 MINUTES 33 SECONDS WEST, 2661 FEET FROM SE CORNER, SECTION 12
130	Unnamed Spring	Cooks Canyon	0.0050	34 S	11 E	WM	32	NE SW	NORTH 58 DEGREES 8 MINUTES 45 SECONDS EAST, 2741 FEET FROM SW CORNER, SECTION 32
517	Unnamed Spring	Sprague River	0.0008	35 S	11 E	WM	8	SE NE	SOUTH 13 DEGREES 30 MINUTES 25 SECONDS WEST, 2032 FEET FROM NE CORNER, SECTION 8
6301	Unnamed Spring	Sprague River	0.0050	35 S	11 E	WM	8	NE SE	NORTH 9 DEGREES 44 MINUTES 0 SECONDS WEST, 1633 FEET FROM SE CORNER, SECTION 8
DRY PRAIRIE (AMENDED MAP CLAIM # 624, PAGE 125)									
6423	Chipmunk Spring	Ben Hall Creek	0.0050	37 S	13 E	WM	10	NW SE	NORTH 37 DEGREES 58 MINUTES 48 SECONDS WEST, 2502 FEET FROM SE CORNER, SECTION 10
6425	Unnamed Spring	Brown Creek	0.1100	37 S	12 E	WM	13	NW SE	NORTH 35 DEGREES 32 MINUTES 31 SECONDS WEST, 2445 FEET FROM SE CORNER, SECTION 13
FERGUSON MOUNTAIN (AMENDED MAP CLAIM # 624, PAGE 126)									
3390	Fawn Spring	Mineral Creek	0.0050	37 S	13 E	WM	4	NE SW	NORTH 48 DEGREES 25 MINUTES 55 SECONDS EAST, 1961 FEET FROM SW CORNER, SECTION 4
11035	Unnamed Spring	Brown Creek	0.0090	36 S	13 E	WM	31	NE NW	SOUTH 71 DEGREES 6 MINUTES 5 SECONDS EAST, 2373 FEET FROM NW CORNER, SECTION 31
FORT KLAMATH (AMENDED MAP CLAIM # 624, PAGE 127)									
11013	Unnamed Spring	Fort Creek	0.0050	33 S	7.5 E	WM	23	NW NE	SOUTH 64 DEGREES 47 MINUTES 40 SECONDS WEST, 1842 FEET FROM NE CORNER, SECTION 23

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
11014	Unnamed Spring	Fort Creek	0.1000	33 S	7.5 E	WM	23	SW SE	SOUTH 89 DEGREES 29 MINUTES 44 SECONDS WEST, 2083 FEET FROM SE CORNER, SECTION 23
11015	Unnamed Spring	Crooked Creek	0.1000	33 S	7.5 E	WM	26	NW NE	SOUTH 59 DEGREES 21 MINUTES 53 SECONDS WEST, 2531 FEET FROM NE CORNER, SECTION 26
11017	Bullfrog Spring	Spring Creek	0.0030	34 S	7 E	WM	5	NW SW	NORTH 17 DEGREES 15 MINUTES 11 SECONDS EAST, 1950 FEET FROM SW CORNER, SECTION 5
11018	Head of Spring Creek	Spring Creek	0.0050	33 S	7 E	WM	33	SW NE	SOUTH 45 DEGREES 22 MINUTES 16 SECONDS WEST, 3434 FEET FROM NE CORNER, SECTION 33
FUEGO MOUNTAIN (AMENDED MAP CLAIM # 624, PAGE 128)									
22	Wildhorse Spring	Williamson River	0.1000	33 S	10 E	WM	25	SE NE	SOUTH 11 DEGREES 23 MINUTES 56 SECONDS WEST, 2266 FEET FROM NE CORNER, SECTION 25
6664	Head of the River Spring	Williamson River	0.0050	33 S	11 E	WM	9	NE NW	SOUTH 87 DEGREES 7 MINUTES 29 SECONDS EAST, 2599 FEET FROM NW CORNER, SECTION 9
6665	Head of the River Spring	Williamson River	0.0050	33 S	11 E	WM	9	NE NW	SOUTH 81 DEGREES 19 MINUTES 15 SECONDS EAST, 2355 FEET FROM NW CORNER, SECTION 9
GORDON LAKE (AMENDED MAP CLAIM # 624, PAGE 129)									
6546	Unnamed Spring	Williamson River	0.0020	30 S	10 E	WM	23	NE SW	NORTH 56 DEGREES 2 MINUTES 2 SECONDS EAST, 2590 FEET FROM SW CORNER, SECTION 23
6549	Unnamed Spring	Dry Creek	0.5643	30 S	11 E	WM	20	SW SW	NORTH 40 DEGREES 14 MINUTES 36 SECONDS EAST, 938 FEET FROM SW CORNER, SECTION 20
6550	Unnamed Spring	Dry Creek	0.2200	30 S	11 E	WM	20	SW SW	NORTH 64 DEGREES 37 MINUTES 18 SECONDS EAST, 1312 FEET FROM SW CORNER, SECTION 20
6551	Unnamed Spring	Hoyt Creek	0.0300	30 S	11 E	WM	23	SE SW	NORTH 77 DEGREES 34 MINUTES 54 SECONDS EAST, 2630 FEET FROM SW CORNER, SECTION 23

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
MODOC POINT (AMENDED MAP CLAIM # 624, PAGE 130)									
230	Shell Rock Spring	Anderson Creek	0.0100	36 S	8 E	WM	27	SE SW	NORTH 66 DEGREES 5 MINUTES 36 SECONDS EAST, 2747 FEET FROM SW CORNER, SECTION 27
11024	Onyx Spring	Upper Klamath Lake	0.0050	37 S	8 E	WM	1	NW NE	SOUTH 71 DEGREES 0 MINUTES 25 SECONDS WEST, 2182 FEET FROM NE CORNER, SECTION 1
PONINA BUTTE (AMENDED MAP CLAIM # 624, PAGE 131)									
3280	Electric Pond	Merritt Creek	0.0020	34 S	13 E	WM	15	SW NE	SOUTH 44 DEGREES 15 MINUTES 23 SECONDS WEST, 3223 FEET FROM NE CORNER, SECTION 15
3283	Frying Pan Spring	Fivemile Creek	0.0050	34 S	13 E	WM	26	NW SE	NORTH 32 DEGREES 13 MINUTES 41 SECONDS WEST, 3007 FEET FROM SE CORNER, SECTION 26
3289	Ponina Springs	Ponina Creek	0.1000	34 S	13 E	WM	31	SW SE	NORTH 54 DEGREES 2 MINUTES 12 SECONDS WEST, 2285 FEET FROM SE CORNER, SECTION 31
3299	Mill Creek Spring	Mill Creek	0.1000	35 S	13 E	WM	8	SE NE	SOUTH 33 DEGREES 43 MINUTES 33 SECONDS WEST, 1763 FEET FROM NE CORNER, SECTION 8
6767	Unnamed Spring	Sycan River	0.0010	34 S	12 E	WM	13	SW SE	NORTH 88 DEGREES 51 MINUTES 36 SECONDS WEST, 2574 FEET FROM SE CORNER, SECTION 13
6768	Unnamed Spring	Fivemile Creek	0.0050	34 S	13 E	WM	29	NW NW	SOUTH 41 DEGREES 12 MINUTES 3 SECONDS EAST, 1678 FEET FROM NW CORNER, SECTION 29
6770	Unnamed Spring	Fivemile Creek	0.0050	34 S	13 E	WM	26	SE NW	SOUTH 58 DEGREES 36 MINUTES 20 SECONDS EAST, 2887 FEET FROM NW CORNER, SECTION 26
RIVERBED BUTTE SPRINGS (AMENDED MAP CLAIM # 624, PAGE 132)									
3135	Watkin Spring	Merritt Creek	0.0006	34 S	13 E	WM	2	NE NE	SOUTH 37 DEGREES 15 MINUTES 17 SECONDS WEST, 861 FEET FROM NE CORNER, SECTION 2
3143	Unnamed Spring	Sycan River	0.0050	34 S	13 E	WM	18	SW NE	SOUTH 39 DEGREES 45 MINUTES 47 SECONDS WEST, 1972 FEET FROM NE CORNER, SECTION 18

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
6858	Unnamed Spring	Sycan River	0.00003	32 S	13 E	WM	31	SW SW	NORTH 70 DEGREES 24 MINUTES 5 SECONDS EAST, 1015 FEET FROM SW CORNER, SECTION 31
6864	Unnamed Spring	Merritt Creek	0.0020	33 S	13 E	WM	35	NW SE	NORTH 47 DEGREES 6 MINUTES 23 SECONDS WEST, 3160 FEET FROM SE CORNER, SECTION 35
6867	Black Hills Guard Station	Sycan River	0.0020	34 S	12 E	WM	1	SW SE	NORTH 86 DEGREES 6 MINUTES 41 SECONDS WEST, 1683 FEET FROM SE CORNER, SECTION 1
ROUND BUTTE (AMENDED MAP CLAIM # 624, PAGE 134)									
40	Marv Stump Spring	Cole Creek	0.0045	29 S	9 E	WM	15	NW NW	SOUTH 16 DEGREES 25 MINUTES 10 SECONDS EAST, 829 FEET FROM NW CORNER, SECTION 15
S' OCHOLIS CANYON (AMENDED MAP CLAIM # 624, PAGE 135)									
98	Cedar Spring	Sprague River	0.0040	35 S	9 E	WM	20	SW SW	NORTH 47 DEGREES 21 MINUTES 12 SECONDS EAST, 449 FEET FROM SW CORNER, SECTION 20
99	Unnamed Spring	Sprague River	0.0045	35 S	8 E	WM	25	SE NE	SOUTH 22 DEGREES 37 MINUTES 19 SECONDS WEST, 2203 FEET FROM NE CORNER, SECTION 25
102	Unnamed Spring	Sprague River	0.0010	35 S	9 E	WM	19	SE NW	SOUTH 61 DEGREES 44 MINUTES 16 SECONDS EAST, 2819 FEET FROM NW CORNER, SECTION 19
7018	Unnamed Spring	Sprague River	0.0050	35 S	8 E	WM	25	SW SE	NORTH 55 DEGREES 6 MINUTES 45 SECONDS WEST, 1753 FEET FROM SE CORNER, SECTION 25
SILVER DOLLAR FLAT (AMENDED MAP CLAIM # 624, PAGE 136)									
251	Unnamed Spring	Sycan River	0.0008	33 S	12 E	WM	33	NE NW	SOUTH 53 DEGREES 47 MINUTES 28 SECONDS EAST, 2099 FEET FROM NW CORNER, SECTION 33
252	Unnamed Spring	Sycan River	0.0050	33 S	12 E	WM	28	NW SW	NORTH 22 DEGREES 31 MINUTES 0 SECONDS EAST, 1449 FEET FROM SW CORNER, SECTION 28
6945	Unnamed Spring	Williamson River	0.0050	33 S	12 E	WM	18	SW SE	NORTH 78 DEGREES 54 MINUTES 5 SECONDS WEST, 1761 FEET FROM SE CORNER, SECTION 18
6946	Unnamed Spring	Sycan River	0.0050	33 S	12 E	WM	16	NE SW	NORTH 61 DEGREES 55 MINUTES 10 SECONDS EAST, 2870 FEET FROM SW CORNER, SECTION 16

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
6948	Tarrent Spring	Sycan River	0.0020	33 S	12 E	WM	22	NE SE	NORTH 9 DEGREES 48 MINUTES 0 SECONDS WEST, 2196 FEET FROM SE CORNER, SECTION 22
6956	Unnamed Spring	Sycan River	0.0050	34 S	12 E	WM	3	NE SE	NORTH 24 DEGREES 8 MINUTES 31 SECONDS WEST, 2016 FEET FROM SE CORNER, SECTION 3
8013	Unnamed Spring	Sycan River	0.0030	33 S	12 E	WM	28	SE SW	NORTH 87 DEGREES 33 MINUTES 17 SECONDS EAST, 2332 FEET FROM SW CORNER, SECTION 28
11019	Unnamed Spring	Sycan River	0.0050	34 S	12 E	WM	3	SW SW	NORTH 31 DEGREES 9 MINUTES 9 SECONDS EAST, 755 FEET FROM SW CORNER, SECTION 3
SOLOMAN BUTTE (AMENDED MAP CLAIM # 624, PAGE 137)									
262	Williamson River Camp	Williamson River	0.0020	34 S	7 E	WM	2	NE NW	SOUTH 59 DEGREES 31 MINUTES 22 SECONDS EAST, 2351 FEET FROM NW CORNER, SECTION 2
7023	Unnamed Spring	Williamson River	0.0050	34 S	7 E	WM	2	SE NE	SOUTH 8 DEGREES 47 MINUTES 46 SECONDS WEST, 2017 FEET FROM NE CORNER, SECTION 2
7026	Unnamed Spring	Whitehorse Spring Creek	0.0050	34 S	8 E	WM	5	SW SW	NORTH 26 DEGREES 47 MINUTES 43 SECONDS EAST, 662 FEET FROM SW CORNER, SECTION 5
7027	Unnamed Spring	Whitehorse Spring Creek	0.0020	34 S	8 E	WM	8	NE NE	SOUTH 20 DEGREES 56 MINUTES 43 SECONDS WEST, 816 FEET FROM NE CORNER, SECTION 8
7029	Unnamed Spring	Williamson River	0.0050	34 S	7 E	WM	10	SE NE	SOUTH 36 DEGREES 5 MINUTES 53 SECONDS WEST, 1873 FEET FROM NE CORNER, SECTION 10
11004	Unnamed Spring	Larkin Creek	0.0050	34 S	7 E	WM	2	SE SE	NORTH 13 DEGREES 22 MINUTES 49 SECONDS WEST, 1355 FEET FROM SE CORNER, SECTION 2
11010	Unnamed Spring	Whitehorse Spring Creek	0.0020	33 S	8 E	WM	27	NW SW	NORTH 19 DEGREES 40 MINUTES 17 SECONDS EAST, 2677 FEET FROM SW CORNER, SECTION 27
SPODUE MOUNTAIN (AMENDED MAP CLAIM # 624, PAGE 138)									
3267	Bob Plank Spring	Blue Creek	0.0010	34 S	12 E	WM	26	SW NE	SOUTH 52 DEGREES 25 MINUTES 56 SECONDS WEST, 2417 FEET FROM NE CORNER, SECTION 26

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
3273	Bitter Spring	Sycan River	0.0018	34 S	12 E	WM	30	NW SE	NORTH 47 DEGREES 12 MINUTES 41 SECONDS WEST, 2281 FEET FROM SE CORNER, SECTION 30
3274	Brush Spring	Sycan River	0.0002	34 S	12 E	WM	30	SE SE	NORTH 41 DEGREES 1 MINUTE 18 SECONDS WEST, 445 FEET FROM SE CORNER, SECTION 30
7044	Cordelia Flat	Sycan River	0.0050	34 S	12 E	WM	17	SW NW	SOUTH 23 DEGREES 25 MINUTES 37 SECONDS EAST, 2603 FEET FROM NW CORNER, SECTION 17
7046	Elde Flat	Sycan River	0.0050	34 S	12 E	WM	19	NE SE	NORTH 21 DEGREES 13 MINUTES 37 SECONDS WEST, 2766 FEET FROM SE CORNER, SECTION 19
7047	Blue Creek Spring	Blue Creek	0.0200	34 S	12 E	WM	28	NW NW	SOUTH 16 DEGREES 15 MINUTES 6 SECONDS EAST, 373 FEET FROM NW CORNER, SECTION 28
7048	Unnamed Spring	Blue Creek	0.0010	34 S	12 E	WM	21	SW SE	NORTH 79 DEGREES 20 MINUTES 36 SECONDS WEST, 2349 FEET FROM SE CORNER, SECTION 21
SPRAGUE RIVER EAST (AMENDED MAP CLAIM # 624, PAGE 139)									
166	SE-6	Rock Creek	0.0050	37 S	11.5 E	WM	12	NE NE	SOUTH 75 DEGREES 7 MINUTES 7 SECONDS WEST, 897 FEET FROM NE CORNER, SECTION 12
SPRAGUE RIVER WEST (AMENDED MAP CLAIM # 624, PAGE 140)									
158	Unnamed Spring	Sprague River	0.0050	36 S	10 E	WM	26	NW SW	NORTH 17 DEGREES 22 MINUTES 45 SECONDS EAST, 2537 FEET FROM SW CORNER, SECTION 26
160	Robin Spring	Sprague River	0.0009	36 S	10 E	WM	33	NW NE	SOUTH 80 DEGREES 30 MINUTES 50 SECONDS WEST, 1759 FEET FROM NE CORNER, SECTION 33
161	Unnamed Spring	Sprague River	0.0050	36 S	10 E	WM	27	SE NW	SOUTH 40 DEGREES 47 MINUTES 13 SECONDS EAST, 3122 FEET FROM NW CORNER, SECTION 27
162	Unnamed Spring	Sprague River	0.0900	36 S	10 E	WM	27	NE SW	NORTH 39 DEGREES 24 MINUTES 9 SECONDS EAST, 3089 FEET FROM SW CORNER, SECTION 27
164	Unnamed Spring	Sprague River	0.0030	36 S	10 E	WM	29	SW NE	SOUTH 47 DEGREES 5 MINUTES 57 SECONDS WEST, 2650 FEET FROM NE CORNER, SECTION 29

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
7145	Unnamed Spring	Sprague River	0.0050	36 S	10 E	WM	27	SW NW	SOUTH 40 DEGREES 31 MINUTES 35 SECONDS EAST, 1989 FEET FROM NW CORNER, SECTION 27
SUGARPINE MOUNTAIN (AMENDED MAP CLAIM # 624, PAGE 141)									
27	Kicking Horse Spring	Mosquito Creek	0.0050	29 S	10 E	WM	9	SE SW	NORTH 67 DEGREES 31 MINUTES 42 SECONDS EAST, 1830 FEET FROM SW CORNER, SECTION 9
360	Bedpan Spring	Jack Creek	0.0050	29 S	10 E	WM	32	SW NW	SOUTH 27 DEGREES 35 MINUTES 32 SECONDS EAST, 2403 FEET FROM NW CORNER, SECTION 32
361	Deer Scaffold Spring	Jack Creek	0.0020	29 S	10 E	WM	22	NE NE	SOUTH 39 DEGREES 35 MINUTES 38 SECONDS WEST, 1752 FEET FROM NE CORNER, SECTION 22
7166	Unnamed Spring	Jack Creek	0.0050	29 S	10 E	WM	28	NW SE	NORTH 48 DEGREES 5 MINUTES 54 SECONDS WEST, 2278 FEET FROM SE CORNER, SECTION 28
11023	Sheep Spring	God Creek	0.0050	29 S	10 E	WM	7	NW NW	SOUTH 66 DEGREES 31 MINUTES 20 SECONDS EAST, 856 FEET FROM NW CORNER, SECTION 7
SUN PASS (AMENDED MAP CLAIM # 624, PAGE 142)									
297	Unnamed Spring	Williamson River	0.0006	32 S	7 E	WM	32	SE NE	SOUTH 0 DEGREES 13 MINUTES 8 SECONDS WEST, 1661 FEET FROM NE CORNER, SECTION 32
298	Egan Spring	Williamson River	0.1215	32 S	7 E	WM	21	NW NE	SOUTH 65 DEGREES 16 MINUTES 32 SECONDS WEST, 2041 FEET FROM NE CORNER, SECTION 21
299	Unnamed Spring	Williamson River	0.0006	32 S	7 E	WM	17	NE SE	NORTH 27 DEGREES 46 MINUTES 11 SECONDS WEST, 2089 FEET FROM SE CORNER, SECTION 17
SWAN LAKE POINT (AMENDED MAP CLAIM # 624, PAGE 143)									
140	Unnamed Spring	Anderson Creek	0.0050	36 S	8 E	WM	25	SE NE	SOUTH 20 DEGREES 18 MINUTES 16 SECONDS WEST, 2077 FEET FROM NE CORNER, SECTION 25
7203	Unnamed Spring	Middle Fork Trout Creek	0.0050	36 S	9 E	WM	17	NE NE	SOUTH 80 DEGREES 20 MINUTES 57 SECONDS WEST, 244 FEET FROM NE CORNER, SECTION 17

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
7204	Unnamed Spring	Middle Fork Trout Creek	0.0050	36 S	9 E	WM	17	NE NE	SOUTH 45 DEGREES 29 MINUTES 37 SECONDS WEST, 755 FEET FROM NE CORNER, SECTION 17
7205	Unnamed Spring	Middle Fork Trout Creek	0.0050	36 S	9 E	WM	17	SE NE	SOUTH 13 DEGREES 29 MINUTES 37 SECONDS WEST, 1539 FEET FROM NE CORNER, SECTION 17
7206	Unnamed Spring	Middle Fork Trout Creek	0.0050	36 S	9 E	WM	17	SE NE	SOUTH 5 DEGREES 9 MINUTES 10 SECONDS WEST, 2015 FEET FROM NE CORNER, SECTION 17
7208	Unnamed Spring	South Fork Trout Creek	0.0050	36 S	9 E	WM	20	NE NE	SOUTH 36 DEGREES 23 MINUTES 46 SECONDS WEST, 1635 FEET FROM NE CORNER, SECTION 20
7210	Unnamed Spring	South Fork Trout Creek	0.0050	36 S	9 E	WM	20	SE SE	NORTH 33 DEGREES 4 MINUTES 26 SECONDS WEST, 886 FEET FROM SE CORNER, SECTION 20
7211	Unnamed Spring	South Fork Trout Creek	0.0050	36 S	9 E	WM	20	SE SE	NORTH 45 DEGREES 55 MINUTES 39 SECONDS WEST, 632 FEET FROM SE CORNER, SECTION 20
7212	Unnamed Spring	South Fork Trout Creek	0.0050	36 S	9 E	WM	21	SW SW	NORTH 17 DEGREES 10 MINUTES 54 SECONDS EAST, 578 FEET FROM SW CORNER, SECTION 21
7214	Unnamed Spring	Upper Klamath Lake	0.0050	36 S	9 E	WM	31	NW NW	SOUTH 19 DEGREES 37 MINUTES 40 SECONDS EAST, 1089 FEET FROM NW CORNER, SECTION 31
WILDHORSE RIDGE (AMENDED MAP CLAIM # 624, PAGE 145)									
8	Unnamed Spring	Williamson River	0.0007	30 S	10 E	WM	33	NW SE	NORTH 57 DEGREES 13 MINUTES 45 SECONDS WEST, 2794 FEET FROM SE CORNER, SECTION 33
9	Blue Jay Spring	Williamson River	0.0006	30 S	10 E	WM	33	NW NE	SOUTH 61 DEGREES 26 MINUTES 23 SECONDS WEST, 2275 FEET FROM NE CORNER, SECTION 33
12	South Flat Spring	Skellock Draw	0.0370	30 S	10 E	WM	28	NW NE	SOUTH 88 DEGREES 20 MINUTES 18 SECONDS WEST, 2159 FEET FROM NE CORNER, SECTION 28
501	Unnamed Spring	Skellock Draw	0.0020	31 S	10 E	WM	6	SE NW	SOUTH 47 DEGREES 46 MINUTES 34 SECONDS EAST, 2934 FEET FROM NW CORNER, SECTION 6

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
WOCUS BAY (AMENDED MAP CLAIM # 624, PAGE 146)									
52	Unnamed Spring	Hog Creek	0.0050	32 S	9 E	WM	28	SE SW	NORTH 61 DEGREES 11 MINUTES 11 SECONDS EAST, 1921 FEET FROM SW CORNER, SECTION 28
53	Unnamed Spring	Hog Creek	0.0050	32 S	8 E	WM	25	SE SE	NORTH 67 DEGREES 47 MINUTES 2 SECONDS WEST, 736 FEET FROM SE CORNER, SECTION 25
55	Dice Crane Spring	Hog Creek	0.0050	32 S	8 E	WM	24	NW SE	NORTH 35 DEGREES 29 MINUTES 42 SECONDS WEST, 2873 FEET FROM SE CORNER, SECTION 24
60	Wocus Spring	Yoss Creek	0.0030	32 S	9 E	WM	5	SE SE	NORTH 37 DEGREES 7 MINUTES 9 SECONDS WEST, 1521 FEET FROM SE CORNER, SECTION 5
447	Cabin Spring	Hog Creek	0.0050	32 S	8 E	WM	35	SE NW	SOUTH 35 DEGREES 44 MINUTES 6 SECONDS EAST, 2888 FEET FROM NW CORNER, SECTION 35
7388	Unnamed Spring	Hog Creek	0.0045	32 S	8 E	WM	24	SW SE	NORTH 60 DEGREES 57 MINUTES 52 SECONDS WEST, 2012 FEET FROM SE CORNER, SECTION 24
7390	Forest Spring	Hog Creek	0.0020	32 S	9 E	WM	34	SE NW	SOUTH 49 DEGREES 10 MINUTES 34 SECONDS EAST, 3460 FEET FROM NW CORNER, SECTION 34
YAINAX BUTTE (AMENDED MAP CLAIM # 624, PAGE 147)									
3462	John Spring	East Branch Whiskey Creek	0.0446	37 S	12 E	WM	15	NE SW	NORTH 49 DEGREES 41 MINUTES 12 SECONDS EAST, 3477 FEET FROM SW CORNER, SECTION 15
11036	Unnamed Spring	Whiskey Creek	0.0010	37 S	11 E	WM	13	NE NE	SOUTH 30 DEGREES 46 MINUTES 20 SECONDS WEST, 1460 FEET FROM NE CORNER, SECTION 13
11037	Deer Spring	Whiskey Creek	0.0030	37 S	11 E	WM	24	NE NW	SOUTH 79 DEGREES 33 MINUTES 15 SECONDS EAST, 1441 FEET FROM NW CORNER, SECTION 24
YAMSAY MOUNTAIN (AMENDED MAP CLAIM # 624, PAGE 148)									
7436	Unnamed Spring	Jackson Creek	0.0100	30 S	11 E	WM	13	SE SE	NORTH 41 DEGREES 60 MINUTES 30 SECONDS WEST, 429 FEET FROM SE CORNER, SECTION 13

Source			Rate	Points of Diversion and Place of Use Locations					
Site ID	Name	Tributary to:	CFS	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description
7437	Unnamed Spring	Jackson Creek	0.0600	30 S	11 E	WM	13	SW SE	NORTH 87 DEGREES 34 MINUTES 6 SECONDS WEST, 2539 FEET FROM SE CORNER, SECTION 13
7441	Unnamed Spring	Jackson Creek	0.0300	30 S	11 E	WM	24	NE SW	NORTH 43 DEGREES 24 MINUTES 36 SECONDS EAST, 2464 FEET FROM SW CORNER, SECTION 24
7463	Unnamed Spring	Jackson Creek	0.1000	30 S	11 E	WM	25	SE NE	SOUTH 16 DEGREES 27 MINUTES 22 SECONDS WEST, 1946 FEET FROM NE CORNER, SECTION 25
7464	Unnamed Spring	Jackson Creek	0.1000	30 S	11 E	WM	25	SE NW	SOUTH 48 DEGREES 8 MINUTES 7 SECONDS EAST, 2655 FEET FROM NW CORNER, SECTION 25
7465	Unnamed Spring	Jackson Creek	0.0100	30 S	11 E	WM	25	SE SW	NORTH 77 DEGREES 0 MINUTES 24 SECONDS EAST, 1497 FEET FROM SW CORNER, SECTION 25
7466	Unnamed Spring	Jackson Creek	0.0400	30 S	11 E	WM	36	NW NE	SOUTH 82 DEGREES 34 MINUTES 48 SECONDS WEST, 2560 FEET FROM NE CORNER, SECTION 36
7467	Unnamed Spring	Jackson Creek	0.0050	30 S	12 E	WM	30	SW SW	NORTH 0 DEGREES 47 MINUTES 41 SECONDS EAST, 1192 FEET FROM SW CORNER, SECTION 30
7468	Unnamed Spring	Jackson Creek	0.0028	30 S	11 E	WM	25	SE SE	NORTH 10 DEGREES 12 MINUTES 59 SECONDS WEST, 458 FEET FROM SE CORNER, SECTION 25
7484	Head of Aspen Creek	Deep Creek	0.0050	31 S	11 E	WM	2	SE NE	SOUTH 5 DEGREES 30 MINUTES 46 SECONDS WEST, 1690 FEET FROM NE CORNER, SECTION 2
7485	Head of Deep Creek	Deep Creek	0.0400	31 S	11 E	WM	1	SW NE	SOUTH 50 DEGREES 42 MINUTES 56 SECONDS WEST, 2535 FEET FROM NE CORNER, SECTION 1
7488	Unnamed Spring	Deep Creek	0.0200	31 S	11 E	WM	1	SW SE	NORTH 62 DEGREES 55 MINUTES 45 SECONDS WEST, 1934 FEET FROM SE CORNER, SECTION 1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION Water Right Claims 625 – 640 (Williamson 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 625 – 640, and that Portion of Claim 612 pertaining to the Williamson 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 contests[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 277.

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 Williamson River incorporates by reference BIA Claims 625 – 640.

[1] Claim 625: 2807, 3024, 3125, 3327, 3886, 4015; Claim 626: 1776, 3025, 3328, 3887, 4016; Claim 627: 1777, 3026, 3329, 3888, 4017; Claim 628: 1778, 3027, 3330, 3889, 4018; Claim 629: 1779, 3028, 3331, 3890, 4019; Claim 630: 1780, 3029, 3332, 3891, 4020; Claim 631: 1781, 3030, 3333, 3892, 4021; Claim 632: 1782, 3031, 3334, 3893, 4022; Claim 633: 1783, 3032, 3335, 3894, 4023; Claim 634: 3033, 3336, 3895, 4024; Claim 635: 3034, 3126, 3337, 3896, 4025; Claim 636: 3035, 3127, 3338, 3897, 4026; Claim 637: 3036, 3339, 3898, 4027; Claim 638: 3037, 3340, 3899, 4028; Claim 639: 3038, 3341, 3900, 4029; Claim 640: 2786, 3039, 3342, 3901, 4030; Claim 612: 1773, 2786, 2802, 3016, 3119, 3249, 3314, 3644, 4002.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 625 – 640, and that Portion of Claim 612 pertaining to the Williamson 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, (2) the Upper Basin Contestants, and (3) 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 625-640 and that Portion of Claim 612 pertaining to the Williamson 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 625 – 640, 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 625-640. 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) as to the reach boundary for Claim 631, (2) to correct the descriptions of the lower reach boundary for Claim 627 and the upper reach boundary for Claim 633, and (3) to recognize rights for Claims 635 and 636 for only those portions of claimed reaches that lie within the former reservation boundary.

8. **Findings of Fact**. Within the Proposed Order's "Findings of Fact" section, Findings of Facts 24, 37, 42, 49, 57, 59, 62 and 64 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

a. *Modifications to Finding of Fact 24*:

24. Claim 627 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 34S, R 7E, S 9, SE¼ NE¼, distance from NW corner S 1° 55' 54" E, 1937.7 ft. The lower reach boundary is identified as T 35S, R 7E, S 3, NW¼ NW¼, distance from NW corner S 61° 20' 14" E, ~~337.3~~ 997.3 ft. (OWRD Ex. 5 at 16.)

Reason for Modification: The Proposed Order contains an error in the description of the lower reach boundary for Claim 627.

b. *Modifications* to Finding of Fact 37:

37. Claim 630 was withdrawn by the United States (*See* Flood Frequency Analysis 277-US-219 at 2.) Monthly Physical Habitat flow values for Williamson River Physical Habitat Claims and Monthly Riparian Habitat flow values for Williamson River Habitat Claims were omitted for Claim Reach 630 from Table 1 and Table 2 , respectively. (Claimants' Joint Opening Post-Hearing Brief at 44 and 58-59.) Claim 630 was omitted from the following: (1) the map showing Williamson River claims for Case 277 (Ex. 277-US-200 at 15, Figure 2.); (2) Table 2 (Ex. 277-US-200 at 41); (3) Table 3 showing OWRD median flow estimates (Ex 277-US-200); (4) Table 5 showing maximum and minimum undepleted median month flows, and ratio by claim reach (277-US-200 at 52); (5) Table 10 showing summary of hydrologic estimates made in support of claims for Case 277 (Ex 277-US-200 at 74); (6) Table 2 showing Riparian Habitat Claims base flows from the Williamson Basin subbasin (Ex 277-US-300 at 100-101); (6) Table 3 showing Riparian Habitat Clam high flows from the Williamson subbasin. (Ex 277-US-300 at 102); (7) Item 70 describing each updated Riparian Habitat Claim in the Williamson River subbasin (Ex 277-US-300 at 103-147); (8) Figure VII-4 showing the map for the location of Physical Habitat claims in the Williamson River subbasin (Ex 277-US-400 at VII-12); (9) the section describing

the stream reach associated with each claim (277-US-400 at IX-625-3 through IX-640-14). ~~In December 2009, Claimants filed their written direct testimony and exhibits. Claimants' evidence reflected downward adjustments of Claim 630. These downward adjustments resulted from basin wide stream flow estimates developed by OWERD between 2000 and 2004 as well as basin wide studies of the physical and riparian habitats, conducted by BIA's experts. The updated claim was capped at the lesser of 66 percent of the median stream flow or the 1999 claim, whichever was lower. (Exs. 277-US-200, 277-US-220, 277-US-300, 277-US-322, 277-US-400, and 277-US-465; test of Chapin and Ramey.)~~

Reason for Modification: The ALJ's finding is not supported by a preponderance of evidence on the record.

c. *Modifications to Finding of Fact 42*:

42. The written direct testimony of Dr. Dudley Reiser (277-US-400), in support of the updated claims, included a map depicting the lower boundary reach of Claim 631 at Klamath Marsh, at the upper reach boundary for Claim 623.[2] The lower reach boundary depicted in Dr. Reiser's direct testimony corresponds with T 30S, R 10E, S 19, SW¼ NE¼ (latitude ~~40~~ 42° 57' 34.35"; longitude 121° 34' 36.98"). (Ex 277-US-400 at IX-631-3; See also, Claimants' Joint Reply Brief at 38.) This constitutes an expansion of the original claim. The appropriate lower reach boundary for Claim 631 is the boundary depicted in the map accompanying the claim, located at S 16, NW¼ NW¼ (latitude 42° 58' 31.43"; longitude 121° 32' 35.82"). (OWRD Ex. 9 at 19, 25.)

Reason for Modification: To make a finding concerning the appropriate lower reach boundary based on an application of the facts in the record to the correct legal standard for claim amendments.

d. *Modifications to Finding of Fact 49*:

49. Claim 633 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 boundaries is identified as T 33S, R 11E, S 9 4,

[2] Claims 615 and 623 claim water rights in "Klamath Marsh and tributaries flowing into the marsh ***." (OWRD Ex. 60 at 3.) These claims are the subject of Case 284 and not addressed further in this order.

NE¼ NW¼ ~~SW¼ SW¼~~, distance from NW corner, S 89° 4'49" E, 2,626 ft. ~~SW corner N 58° 19'13" E, 1,206.9 ft.~~ The lower reach boundary is identified as T 32S, R 11E, S 17, NE¼, SW¼, distance from SW corner N 38° 28'32" E, 3,176 ft. (OWRD Ex. 11 at 16.)

Reason for Modification: The Proposed Order contains an error in the description of the upper reach boundary for Claim 633.

e. *Modifications to Finding of Fact 57*:

57. Claim 635 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 31S, R 7.5E, S 6, NE¼, SW¼, distance from SW corner N 49° 19' 59" E, 2,077.8 ft. (OWRD Ex. 13 at 23.) The lower reach boundary is identified as T 31S, R 8E, S 18, SW¼, SE¼, distance from SE corner S 89° 57' 32" W, 2, 412 ft. (Stipulation). A portion of the Claim 635 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, which is located at the western edge of the SE¼ NE¼ , Section 31, T 31 S, R 7 E, W.M., distance from NE corner S 37° 15' 2" W, 2551 ft.[3]

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 59:*

59. Sand Creek originates outside the boundaries of the former reservation, flows onto the reservation and into Klamath Marsh. The portion of Claim 635 upstream of approximately River Mile 8 lies outside (west of) the former reservation boundary. Claim 635 claims instream flows within the 18-mile stretch of Sand Creek from the point of origination near Crater Lake until it terminates at the marsh. (Exs. 277-US-400 and 277-US-300, See, Fig. 21.)

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

[3] Bearing and distance measurementsby OWRD in UTM 10, NAD 27

g. *Modifications to Finding of Fact 62*:

62. Claim 636 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 31S, R 7.5E, S 14, NW¼, NE¼, distance from NE corner S 86° 26' 43" W, 2,547.9 ft. (OWRD Ex. 14 at 18.) The lower reach boundary is identified as T 31S, R 7E, S 1, NE¼, SE¼, distance from SE corner N 17° 31' 36" W, 2,591 ft. (Stipulation.) A portion of the Claim 636 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, located at the western edge of the SE¼ NE¼ , Section 18, T 31 S, R 7 E, W.M., distance from NE corner S 32° 37' 18" W, 3080 ft.[4]

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

h. *Modifications to Finding of Fact 64*:

64. Scott Creek also originates outside the boundaries of the former reservation. Like Sand Creek, Scott Creek flows onto the reservation and into Klamath Marsh. The portion of Claim 636 upstream of approximately River Mile 7.1 lies outside (west of) the former reservation boundary. Claim 636 claims instream flows within the 10-mile stretch of Scott Creek from the point of origination until it terminates at the marsh. (Exs. 277-US-400 and 277-US-300, See, Fig. 22.)

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 in order to fulfill the purposes of the reservation.

[4] Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27

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

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

a. *The final three paragraphs of Section III.2 (Proposed Order at 37-38) are replaced in their entirety as follows:*

From a reading of the statutes, it appears clear that, as relevant here, the purposes of the claim filing requirements are to obtain sufficient information to allow OWRD to determine the water rights claimed and to allow interested parties to contest a claim if it appears such claim may affect their own water rights. OWRD's treatment of conflicting information in the documents, discussed above, tends to substantiate this interpretation. Accordingly, the question to be resolved is whether the information provided with the claim provided sufficient information to put potential contestants on notice that Claimants might intend to claim the greater quantity of water. OWRD concludes that it did not.

The United States Amended Claim 631 included two pieces of information about the lower boundary of the reach. The first is a map, which identifies a point on the Williamson River as the lower reach boundary. The lower reach boundary depicted on the map is approximately two miles northeast of the boundary of the Klamath Marsh National Wildlife Refuge. The second is a written description of the reach as extending from "Deep Creek to Klamath Marsh."

OWRD concludes that the written description does not provide a reasonably identifiable alternative to the lower reach boundary depicted on the map. In other words, the written description is insufficient to put prospective contestants on notice that the United States intended to claim a longer reach that is identified in the map.

The "Klamath Marsh" is a geographic feature. It is not reasonably possible to determine the boundaries of this feature from the claim information submitted by the United States. A prospective contestant could not, therefore, reasonably be considered to be on notice that the United States intended to claim a lower reach boundary other than the boundary depicted on the United States' claim map.

The United States contends that the term "Klamath Marsh" must necessarily refer to the Klamath Marsh National Wildlife Refuge ("Refuge"), the boundaries of which are identifiable in information submitted with the claim. But the boundaries of the Refuge are political boundaries, and they are not necessarily coextensive with the boundaries of the geographic feature. When the United States used the term "Klamath Marsh" in describing a boundary of their claim, it is unclear whether they intended to refer to the Refuge boundary or the geographic feature (and if the geographic feature, it is unclear precisely where they believed that geographic feature lies). Given that the Claimants bear the burden of establishing the boundaries of their claim, OWRD cannot conclude that

the term "Klamath Marsh" is sufficiently identifiable as to pose a reasonable alternative to the clearly mapped location provided in the claim.

The lower reach boundary for Claim 631 is therefore limited to the point identified on the United States' claim map.

b. *Section VII (Proposed Order at 45-46) is replaced in its entirety as follows:*

Claimants filed claims for instream water rights for two streams that originate and travel for some distance outside the former reservation boundaries before flowing onto the reservation and into Klamath Marsh. Scott and Sand Creeks (Claim 635 and 636, respectively) begin several miles west of the former reservation. Considerable portions of each stream lies outside former reservation land. Claimants assert these off-reservation portions of Sand and Scott Creeks are necessary to preservation of certain treaty species of fish, namely redband trout. OWRD and Contestants each contend that Claimants are not entitled to claim water rights outside the boundaries of the former reservation. For the reasons described below, the off-reservation portions of Claims 635 and 636 must be denied.

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 <u>outside</u> 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") 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 C to the Affidavit of David W. Harder in Support of the United States' and Klamath Tribes' Joint Opening Post-Hearing Brief) (referred to herein as "Instructions to Watermaster").

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 Yakima 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 doe not engage in any analysis of the federal reserved water rights doctrine that supports an expansion of the doctrine to

[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.

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 635 and 636 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; to describe the Department's reasoning for finding that the lower reach boundary for Claim 631 that is identified in the Claimants' testimony constitutes an impermissible claim amendment.

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.9, above.
   f. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.9, above.
   g. The "Opinion" is adopted with modifications, as set forth in Section A.10, 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 625-640. 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) as to the reach boundary for Claim 631, (2) to correct the descriptions of the lower reach boundary for Claim 627 and the upper reach boundary for Claim 633, and (3) to recognize rights for Claims 635 and 636 for only those portions of claimed reaches that lie within 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 625 – 640 are determined in this Partial Order of Determination for Claims 625 – 640.

3. Based upon the file and record herein, including withdrawal of Claim 630, IT IS ORDERED that Claim 630 is denied and is of no force or effect.

4. Based on the file and record herein, IT IS ORDERED that Claims 625 - 629 and 631 - 640, are approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 625

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 625, PAGES 31-32, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 70826)[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	650	650
February	650	650
March	650	650
April	873	873
May	873	873
June	873	873
July	650	650
August	620	620
September	650	650
October	650	650
November	650	650
December	650	650

[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. 277-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 (625-640) 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. 277-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	1100	2180	4190
April	1440	2180	4190
May	1300	2180	4190
June	805	--	--
July	472	--	--
August	409	--	--
September	433	--	--
October	488	--	--
November	605	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM HIGHWAY 97 TO UPPER KLAMATH LAKE							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile[7]
Upper Reach Boundary	35 S	7 E	WM	21	SWNE	SOUTH 47° 12' 29" WEST, 3030.7 FEET FROM NE CORNER	7
Lower Reach Boundary	36 S	7.5 E	WM	11	SE NE	NORTH 37° 22' 51" WEST, 413.1 FEET FROM SE CORNER	0

[7] References to the approximate River Mile for the upper and lower reach boundaries of each claim (625-640) are included solely for OWRD's convenience.

CLAIM NO. 626

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 626, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 31420125) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	650	650
February	650	650
March	650	650
April	700	700
May	700	700
June	700	700
July	650	650
August	620	620
September	650	650
October	650	650
November	650	650
December	650	650

[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. 277-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. 277-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	1100	2180	4190
April	1430	2180	4190
May	1300	2180	4190
June	805	--	--
July	472	--	--
August	409	--	--
September	433	--	--
October	488	--	--
November	604	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM SPRAGUE RIVER CONFLUENCE TO HIGHWAY 97							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	35 S	7 E	WM	3	NW NW	SOUTH 61° 20' 34" EAST, 996.8 FEET FROM NW CORNER	11
Lower Reach Boundary	35 S	7 E	WM	21	SW NE	SOUTH 47° 12' 29" WEST, 3030.7 FEET FROM NE CORNER	7

CLAIM NO. 627

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 627, PAGE 14, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 70827) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	420	420
February	420	420
March	420	420
April	420	420
May	420	420
June	420	420
July	357	357
August	357	357
September	250	250
October	250	250
November	250	250
December	420	420

[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. 277-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. 277-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	550	787	1150
April	578	787	1150
May	442	787	1150
June	335	--	--
July	259	--	--
August	243	--	--
September	245	--	--
October	246	--	--
November	323	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM SPRING CREEK TO THE SPRAGUE RIVER CONFLUENCE							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	34 S	7 E	WM	9	SE NE	SOUTH 1° 55' 54" EAST, 1937.7 FEET FROM NE[a] CORNER	16.7
Lower Reach Boundary	35 S	7 E	WM	3	NW NW	SOUTH 61° 20' 14" EAST, 997.3 FEET FROM NW CORNER	11

[a] The claim map incorrectly referenced the distance/bearing for the upper reach from the NW corner. (OWRD Ex. 5 at 5.)

CLAIM NO. 628

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 628, PAGE 16, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 70825) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	110	110
February	110	110
March	110	110
April	110	110
May	100	100
June	100	100
July	87	87
August	46	46
September	27	27
October	60	60
November	100	100
December	110	110

[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. 277-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. 277-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	350	494	835
April	376	494	835
May	240	494	835
June	133	--	--
July	57	--	--
August	42	--	--
September	45	--	--
October	46	--	--
November	123	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM THE LOWER END OF KIRK CANYON TO SPRING CREEK							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	7 E	WM	36	SW NW	SOUTH 18° 34' 28" EAST, 1584.0 FEET FROM NW CORNER	21.5
Lower Reach Boundary	34 S	7 E	WM	10	SW NW	SOUTH 1° 55' 54" EAST, 1937.7 FEET FROM NW CORNER	16.7

CLAIM NO. 629

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 629, PAGES 18-19, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 31420148) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	100
February	100
March	100
April	67
May	67
June	60
July	60
August	43
September	27
October	48
November	55
December	100

[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. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT BASE FLOWS [b]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	329
April	357
May	223
June	117
July	43
August	29
September	27
October	32
November	109
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. 277-US-300 at 54.) 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:

WILLIAMSON RIVER FROM THE TOWN OF KIRK TO LOWER END OF KIRK CANYON							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27) (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	7 E	WM	1	NE NW	SOUTH 84° 52' 25" EAST, 1679.5 FEET FROM NW CORNER	28
Lower Reach Boundary	33 S	7 E	WM	36	SW NW	SOUTH 18° 34' 28" EAST, 1584.0 FEET FROM NW CORNER	21.5

CLAIM NO. 631

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 631, PAGES 21-24, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 31420127) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	70
February	59
March	59
April	59
May	59
June	90
July	74
August	64
September	64
October	66
November	68
December	70

[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. 277-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	64	150	150
April	92	150	150
May	108	150	150
June	87	--	--
July	51	--	--
August	43	--	--
September	45	--	--
October	48	--	--
November	48	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM DEEP CREEK TO KLAMATH MARSH							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	11 E	WM	31	NW NW	SOUTH 21° 33' 6" EAST, 1558.4 FEET FROM NW CORNER	80
Lower Reach Boundary	30 S	10 E	WM	16	NW NW	SOUTH 37° 9' 19" EAST, 1554.0 FEET FROM NW CORNER	60

CLAIM NO. 632

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 632, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 31420115) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	52
February	58
March	58
April	58
May	58
June	52
July	52
August	52
September	52
October	52
November	52
December	52

[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. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT BASE FLOWS [b]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	42
April	59
May	56
June	50
July	39
August	36
September	37
October	38
November	40
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. 277-US-300 at 54.) 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:

WILLIAMSON RIVER FROM WICKIUP SPRING TO DEEP CREEK							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	32 S	11 E	WM	17	NE SW	NORTH 38° 28' 32" EAST, 3176.1 FEET FROM SW CORNER	86.5
Lower Reach Boundary	31 S	11 E	WM	31	NW NW	SOUTH 21° 33' 6" EAST, 1558.4 FEET FROM NW CORNER	80

CLAIM NO. 633

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 633, 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 WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

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# 31420128) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	10
February	10
March	14
April	14
May	14
June	13
July	10
August	10
September	13
October	13
November	13
December	10

[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. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT BASE FLOWS [b]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	26
April	35
May	33
June	31
July	24
August	22
September	23
October	24
November	25
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. 277-US-300 at 54.) 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:

WILLIAMSON RIVER FROM CAMPGROUND SPRINGS TO WICKIUP SPRING							
	Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Coordinate Description (NAD 27)**	**Approx River Mile**
Upper Reach Boundary	33 S	11 E	WM	9	NE NW	SOUTH 89° 4' 49" EAST, 2626 FEET FROM NW CORNER	95+
Lower Reach Boundary	32 S	11 E	WM	17	NE SW	NORTH 38° 28' 32" EAST, 3176.1 FEET FROM SW CORNER	86.5

CLAIM NO. 634

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 634, 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: LARKIN CREEK, 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# 31420129) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	8	8
February	10	10
March	13	13
April	13	13
May	13	13
June	13	13
July	11	11
August	10	10
September	11	11
October	9	9
November	8	8
December	8	8

[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. 277-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. 277-US-400 at II-8.)

RIPARIAN HABITAT BASE FLOWS [c]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	12.0
April	11.0
May	11.0
June	9.4
July	7.5
August	7.3
September	7.4
October	7.5
November	7.5
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. 277-US-300 at 54.) 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:

LARKIN CREEK FROM LARKIN CREEK SOURCE TO THE WILLIAMSON RIVER @ RM 19.4							
	Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Coordinate Description (NAD 27)**	**Approx River Mile**
Upper Reach Boundary	34 S	7 E	WM	11	SW SW	NORTH 68° 23' 15" EAST, 1272.6 FEET FROM SW CORNER	2.5
Lower Reach Boundary	34 S	7 E	WM	3	NE SE	NORTH 15° 28' 39" WEST, 2192.4 FEET FROM SE CORNER	0

CLAIM NO. 635

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 635, PAGES 21-24, 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: SAND CREEK, tributary to the KLAMATH MARSH

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# 31420102) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	18
February	17
March	18
April	23
May	39
June	33
July	33
August	30
September	28
October	22
November	20
December	19

[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. 277-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	12	187	310
April	15	187	310
May	27	187	310
June	42	187	310
July	34	--	--
August	20	--	--
September	18	--	--
October	15	--	--
November	13	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SAND CREEK FROM THE WESTERN EDGE OF THE FORMER KLAMATH INDIAN RESERVATION BOUNDARY TO THE KLAMATH MARSH							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	7 E	WM	31	SE NE	SOUTH 37° 15' 2" WEST, 2551 FEET FROM NE CORNER	8
Lower Reach Boundary	31 S	8 E	WM	18	SW SE	SOUTH 89° 57' 32" WEST, 2512 FEET FROM SE CORNER	0

CLAIM NO. 636

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 636, 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: SCOTT CREEK, tributary to the KLAMATH MARSH

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# 31420105) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	7.8
February	7.5
March	7.6
April	9.3
May	9.3
June	15.0
July	15.0
August	14.0
September	12.0
October	9.3
November	8.3
December	8.7

[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. 277-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	5.0	91	110
April	7.1	91	110
May	18.0	91	110
June	25.0	91	110
July	17.0	--	--
August	9.2	--	--
September	8.1	--	--
October	6.2	--	--
November	5.5	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SCOTT CREEK FROM THE WESTERN EDGE OF THE FORMER KLAMATH INDIAN RESERVATION BOUNDARY TO THE KLAMATH MARSH							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	7 E	WM	18	SE NE	SOUTH 32° 37' 18" WEST, 3080 FEET FROM NE CORNER	7.1
Lower Reach Boundary	31 S	7 E	WM	1	NE SE	NORTH 17° 31' 36" WEST, 2591 FEET FROM SE CORNER	0

CLAIM NO. 637

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 637, 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: JACKSON CREEK, 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# 31420112) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	8.5
February	9.0
March	9.0
April	14.0
May	22.0
June	15.0
July	6.4
August	4.7
September	4.9
October	5.5
November	6.2
December	7.3

[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. 277-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	8.8	96	160
April	13.0	96	160
May	16.0	96	160
June	10.0	96	160
July	4.2	--	--
August	3.1	--	--
September	3.2	--	--
October	3.6	--	--
November	4.1	--	--
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. 277-US-300 at 54.) 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. 277-US-300 at 82-83.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

JACKSON CREEK FROM JACKSON CREEK SOURCE TO THE WILLIAMSON RIVER @ RM 64.4							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	30 S	11 E	WM	25	NW NE	SOUTH 64° 33' 54" WEST, 2019.8 FEET FROM NE CORNER	9.8
Lower Reach Boundary	30 S	10 E	WM	23	SE NE	SOUTH 26° 52' 58" WEST, 1647.4 FEET FROM NE CORNER	0

CLAIM NO. 638

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 638, 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: IRVING CREEK, tributary to JACKSON CREEK

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# 31420130) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	2.0
February	2.0
March	2.0
April	2.0
May	2.0
June	2.0
July	2.0
August	1.7
September	1.7
October	1.8
November	2.0
December	2.0

[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. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT BASE FLOWS [b]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	2.0
April	2.0
May	2.0
June	2.0
July	1.4
August	1.1
September	1.1
October	1.2
November	1.4
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. Riparian Habitat Base Flow values represent the minimum flows that must be maintained.

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRVING CREEK FROM IRVING CREEK SOURCE TO JACKSON CREEK							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	30 S	11 E	WM	20	SW SW	SOUTH 64° 5' 36" EAST, 1027.1 FEET FROM SW CORNER	2
Lower Reach Boundary	30 S	10 E	WM	13	SE SW	NORTH 87° 6' 46" EAST, 2191.5 FEET FROM SW CORNER	0

CLAIM NO. 639

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 639, 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: DEEP CREEK, 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# 31420131) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	2.8
February	3.4
March	5.2
April	5.4
May	5.4
June	7.9
July	2.2
August	1.4
September	1.5
October	1.8
November	2.0
December	2.3

[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. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT BASE FLOWS [b]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	3.4
April	7.1
May	10.0
June	5.2
July	1.4
August	0.9
September	0.97
October	1.2
November	1.3
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. 277-US-300 at 54.) 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:

DEEP CREEK FROM DEEP CREEK SOURCE TO THE WILLIAMSON RIVER @ RM 80							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	11 E	WM	1	SW NE	SOUTH 43° 57' 40" WEST, 2594.7 FEET FROM NE CORNER	9.5
Lower Reach Boundary	31 S	11 E	WM	31	NW NW	SOUTH 21° 33' 6" EAST, 1558.4 FEET FROM NW CORNER	0

CLAIM NO. 640

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 640, 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: SPRING CREEK, 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# 70818) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	220	220
February	220	220
March	220	220
April	220	220
May	220	220
June	220	220
July	220	220
August	220	220
September	200	303
October	220	303
November	220	302
December	220	220

[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. 277-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. 277-US-400 at II-8.)

RIPARIAN HABITAT BASE FLOWS [c]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	199
April	201
May	202
June	202
July	201
August	201
September	200
October	200
November	199
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. 277-US-300 at 54.) 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:

SPRING CREEK FROM SPRING CREEK SOURCE TO WILLIAMSON RIVER@ RM 16.8							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	7 E	WM	33	SW NE	SOUTH 34° 54' 17" WEST, 3158.2 FEET FROM NE CORNER	2.5
Lower Reach Boundary	34 S	7 E	WM	9	SE NE	SOUTH 1° 7' 21" EAST, 1867 FEET FROM NE CORNER	0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION Water Right Claims 641 – 657 (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 contests[1] 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.

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 "~~strikethrough~~" 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.

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[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, NW¼ NE¼, 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, SW¼ NW¼, 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.

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 form 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 Yakima 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 doe 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 <u>underline</u> 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: <u>49 cfs</u> ~~83 cfs~~

August 1 – 31: <u>32 cfs</u> ~~67 cfs~~

September 1 – 30: <u>33 cfs</u> ~~73 cfs~~

October 1 – 31: <u>41 cfs</u> ~~79 cfs~~

November 1 – 30: <u>67 cfs</u> ~~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.

[Beginning of 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 THOUGHOUT 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 THOUGHOUT 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

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION Water Right Claims 658 – 667 (Sycan 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 658 – 667 and that Portion of Claim 612 pertaining to the Sycan 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 contests[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 279.

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 Sycan River incorporates by reference BIA Claims 658 – 667.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 658 – 667, and that

[1] Claim 658: 2809, 3057, 3360, 3919, 4048; Claim 659: 3058, 3361, 3920, 4049; Claim 660: 3059, 3362, 3921, 4050; Claim 661: 3060, 3363, 3922, 4051; Claim 662: 2810, 3061, 3364, 3923, 4052; Claim 663: 2766, 2811, 3062, 3365, 3924, 4053; Claim 664: 3063, 3366, 3925, 4054; Claim 665: 2767, 2812, 3064, 3367, 3926, 4055; Claim 666: 3065, 3368, 3927, 4056; Claim 667: 2768, 2813, 3066, 3369, 3928, 4057; Claim 612: 2769, 2802, 3016, 3249, 3314, 3644, 4002.

Portion of Claim 612 pertaining to the Sycan 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 658 – 667 and that Portion of Claim 612 pertaining to the Sycan 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 657 – 667, 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 658 – 663 and 665 – 667.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 667, and (2) to recognize rights for Claims 663 and 666 for only those portions of claimed reaches that lie within the former reservation boundary. Claim 664 is denied because it lies entirely outside of the former reservation boundary.

8. **Findings of Fact**. Within the Proposed Order's "Findings of Fact" section, Findings of Facts 36, 37, 50, 51, and 55 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   a. *Modifications to Finding of Fact 36*:

      36. Claim 663 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 32S, R 14E, S 36, SE¼, NE¼, distance from NE corner S 51° 1' 54" W, 1,544.7 ft. The lower reach boundary is identified as T 33S, R 13E, S 10, NE¼, SW¼, distance from SW corner N 52° 59' 31" E, 2,407.3 ft. (OWRD Ex. 24 at 22.) A portion of Claim 663 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 25, T 32S, R 13E, W.M., distance from NE corner S 2° 6' 6" E, 1550 ft.[2]

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 37*:

37. Claim 663 is located within the Sycan River and runs along the southern edge of the Sycan Marsh. Claim 663 encompasses approximately 14.5 miles of the Sycan River. Approximately six miles of the upper portion of this reach lies outside the eastern boundary of the former reservation. Specifically, the portion of Claim 663 upstream of approximately River Mile 42.5 lies outside (east of) the former reservation boundary. Claim 663 claims instream flows throughout the reach to support on-reservation treaty rights. (OWRD Ex. 24 at 20 through 22; See also, Exs. 279-US-400 and 279-US-300.)

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

c. *Modifications to Finding of Fact 50*:

50. Claim 666 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 30S, R 12E, S 34, NW¼, SW¼, distance from SW corner N 19° 43' 30" E, 1,666.2 ft. The lower reach boundary is identified as T 31S, R 12E, S 35, NW¼, SW¼, distance from SW corner N 41° 9' 6" E, 1,997.4 ft. (OWRD Ex. 27 at 19.) A portion of Claim 666 lies outside the former reservation boundary. The upper reach boundary is

[2] Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27

therefore limited to within the reservation boundary, which is located at the northern edge of the NW¼ NW¼ , Section 3, T 31S, R 12E, W.M. , distance from NW corner N 88° 34' 33" E, 1230 ft.[3]

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

d. *Modifications to Finding of Fact 51*:

51. Calahan Creek originates just outside the northern boundary of the former reservation, at the base of Yamsay Mountain, flows onto the reservation at approximately River Mile 7, and into Long Creek. The vast majority of Calahan Creek flows within the boundaries of the former reservation. Claim 666 claims instream flows within the entirety of Calahan Creek, from the point of origination until it terminates at Long Creek, to support on-reservation treaty rights. (OWRD Ex. 27 at 18 through 19; See also, Exs. 279-US-400 and 279-US-300.)

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 55:*

55. Claim 667 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 31S, R 12E, S ~~13~~ 12, ~~NW ¼ NW ¼~~ SW¼ SW¼, distance from SW Corner N 88° 26' 10" E, 1097 ft. ~~distance from NW corner S 87° 15'6" E, 1,072.7 ft.~~ (Stipulation). The lower reach boundary is identified as T 31S, R 13E, S 25, SW¼, SE¼, distance from SE corner N 73° 9'43" W, 2,271 ft. (OWRD Ex. 128 at 20.)

Reason for Modification: The Proposed Order contains an error in the description of the upper reach boundary for Claim 667.

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

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 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 38-39) is replaced in its entirety as follows:

Claimants filed claims for instream water rights for three reaches partially or entirely outside the former reservation boundaries. Two of these reaches originate outside those boundaries before flowing onto the reservation. Calahan Creek (Claim 666) and the portion of the Sycan River between Long Creek and Guard Station (Claim 663) each begin outside the former reservation. The portion of the Sycan River between Paradise Creek and Long Creek (Claim 664) begins and terminates outside the eastern boundary of the former reservation. Claimants assert these off-reservation claims are necessary to the preservation of certain treaty species of fish, including redband trout and at least one species of sucker. In addition, Claimants attest that these reaches will provide necessary habitat for anadromous species once successfully introduced to the basin. OWRD and Contestants each contend that 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 <u>outside</u> 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,[4] *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").

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

[4] 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.

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 Yakima 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 doe 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 663 and 666, and the entirety of Claim 664 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.

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 658 – 663 and 665 – 667. 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 667, and (2) to recognize rights for Claims 663 and 666 for only those portions of claimed reaches that lie within the former reservation boundary. Claim 664 is denied because it lies 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 658 – 667 are determined in this Partial Order of Determination for Claims 658 – 667.

3. Based on the file and record herein, IT IS ORDERED that Claim 664 is denied and is of no force or effect.

4. Based on the file and record herein, IT IS ORDERED that Claims 658 – 663 and 665 – 667 are approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 658

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 658, 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: The SYCAN RIVER, 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# 70823)[5] TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	71	71
February	106	106
March	237	237
April	342	342
May	342	342
June	150	153
July	45	45
August	30	30
September	25	25
October	28	28
November	48	48
December	65	65

[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. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

[5] References to the Water Availability Basin (WAB) for each claim (658-667) 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. 279-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	156	1130	1670
April	250	1130	1670
May	295	1130	1670
June	101	--	--
July	30	--	--
August	20	--	--
September	23	--	--
October	27	--	--
November	38	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM BLUE CREEK TO THE SPRAGUE RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile[6]
Upper Reach Boundary	35 S	12 E	WM	5	NE SW	NORTH 42° 9' 43" EAST, 2087.3 FEET FROM SW CORNER	13.2
Lower Reach Boundary	36 S	12 E	WM	10	NW SW	NORTH 33° 9' 54" WEST, 1777.7 FEET FROM SW CORNER	1.5

[6] References to the approximate River Mile for the upper and lower reach boundaries of each claim (658-667) are included solely for OWRD's convenience.

CLAIM NO. 659

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 659, 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: The SYCAN RIVER, 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# 31420269) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	58	58
February	82	82
March	150	150
April	150	150
May	150	150
June	132	132
July	33	33
August	20	20
September	21	21
October	25	25
November	34	34
December	48	48

[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. 279-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. 279-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	103	1050	1540
April	251	1050	1540
May	277	1050	1540
June	87	--	--
July	21	--	--
August	13	--	--
September	15	--	--
October	19	--	--
November	23	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM TEDDY POWERS MEADOW TO BLUE CREEK							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	34 S	11 E	WM	1	NW SE	NORTH 48° 22' 29" WEST, 2984.3 FEET FROM SE CORNER	21.3
Lower Reach Boundary	35 S	12 E	WM	5	NE SW	NORTH 42° 9' 43" EAST, 2087.3 FEET FROM SW CORNER	13.2

CLAIM NO. 660

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 660, 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: The SYCAN RIVER, 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# 31420237) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	47	47
February	47	47
March	47	47
April	47	47
May	47	47
June	131	131
July	32	32
August	20	20
September	16	16
October	20	20
November	34	34
December	47	47

[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. 279-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. 279-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	100	732	1550
April	248	732	1550
May	273	732	1550
June	86	--	--
July	21	--	--
August	13	--	--
September	15	--	--
October	19	--	--
November	23	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM TORRENT SPRING TO TEDDY POWERS MEADOW							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	12 E	WM	22	NE SE	NORTH 14° 52' 52" WEST, 2103.8 FEET FROM SE CORNER	29.1
Lower Reach Boundary	34 S	11 E	WM	1	NW SE	NORTH 48° 22' 29" WEST, 2984.3 FEET FROM SE CORNER	21.3

CLAIM NO. 661

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 661, PAGE 14, 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 SYCAN RIVER, 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# 31420238) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	45	45
February	66	66
March	117	117
April	117	117
May	117	117
June	78	118
July	22	22
August	10	10
September	13	13
October	18	18
November	23	23
December	37	37

[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. 279-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. 279-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	84	700	1480
April	230	700	1480
May	259	700	1480
June	78	--	--
July	14	--	--
August	6.7	--	--
September	8.6	--	--
October	12	--	--
November	15	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM MERRITT CREEK TO TORRENT SPRING							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	13 E	WM	30	NE NE	SOUTH 78° 36' 28" WEST, 799.2 FEET FROM NE CORNER	34.3
Lower Reach Boundary	33 S	12 E	WM	22	NE SE	NORTH 14° 52' 52" WEST, 2103.8 FEET FROM SE CORNER	29

CLAIM NO. 662

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 662, 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 SYCAN RIVER, 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# 31420239) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	41	41
February	60	60
March	75	75
April	75	75
May	75	75
June	75	113
July	21	21
August	10	10
September	8	8
October	11	11
November	22	22
December	34	34

[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. 279-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. 279-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	69	605	1280
April	203	605	1280
May	236	605	1280
June	75	--	--
July	14	--	--
August	6.7	--	--
September	8	--	--
October	11	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM THE GUARD STATION TO MERRITT CREEK							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	13 E	WM	10	NE SW	NORTH 52° 59' 31" EAST, 2407.3 FEET FROM SW CORNER	39.3
Lower Reach Boundary	33 S	13 E	WM	30	NE NE	SOUTH 78° 36' 28" WEST, 799.2 FEET FROM NE CORNER	34.4

CLAIM NO. 663

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 663, PAGES 18-20, 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 SYCAN RIVER, 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# 70821) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	35
February	35
March	34
April	34
May	34
June	35
July	20
August	10
September	13
October	13
November	21
December	31

[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. 279-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	36	589	1050
April	100	589	1050
May	127	589	1050
June	35	--	--
July	10	--	--
August	6.2	--	--
September	4.9	--	--
October	5	--	--
November	6.3	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM THE EASTERN EDGE OF THE FORMER KLAMATH INDIAN RESERVATION BOUNDARY TO THE GUARD STATION							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	32 S	13 E	WM	25	SE NE	SOUTH 2° 6' 6" EAST, 1550 FEET FROM NE CORNER	42.5
Lower Reach Boundary	33 S	13 E	WM	10	NE SW	NORTH 52° 59' 31" EAST, 2407.3 FEET FROM SW CORNER	39.3

CLAIM NO. 665

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 665, PAGES 21-24, 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: LONG CREEK, tributary to the SYCAN MARSH

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# 31420215) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	14
February	14
March	19
April	19
May	19
June	14
July	14
August	13
September	13
October	13
November	13
December	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. 279-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	26	136	193
April	44	136	193
May	56	136	193
June	32	--	--
July	12	--	--
August	8.8	--	--
September	9.3	--	--
October	11	--	--
November	12	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LONG CREEK FROM LONG CREEK SOURCE TO THE SYCAN MARSH							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	12 E	WM	5	NW NE	SOUTH 67° 56' 48" WEST, 2171.4 FEET FROM NE CORNER	21.1
Lower Reach Boundary	32 S	13 E	WM	4	SE NE	SOUTH 1° 38' 39" WEST, 1646.9 FEET FROM NE CORNER	6

CLAIM NO. 666

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 666, 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: CALAHAN CREEK, tributary to LONG CREEK

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# 31420241) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	3.8
February	4.1
March	4.8
April	4.8
May	4.8
June	4.4
July	2.5
August	1.3
September	1.9
October	2
November	2.4
December	2.9

[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. 279-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	3.9	37	63
April	7.1	37	63
May	11	37	63
June	2.9	37	63
July	1.7	--	--
August	.87	--	--
September	1.3	--	--
October	1.3	--	--
November	1.6	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

CALAHAN CREEK FROM THE NORTHERN EDGE OF THE FORMER KLAMATH INDIAN RESERVATION BOUNDARY TO LONG CREEK @ RM 12.5							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	12 E	WM	3	NW NW	NORTH 88° 34' 33" EAST, 1230 FEET FROM NW CORNER	7
Lower Reach Boundary	31 S	12 E	WM	35	NW SW	NORTH 41° 9' 6" EAST, 1997.4 FEET FROM SW CORNER	0

CLAIM NO. 667

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 667, PAGES 19-20, 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: COYOTE CREEK, tributary to the SYCAN MARSH

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# 3142026) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)
January	2.2
February	2.9
March	1.2
April	1.2
May	1.2
June	4.2
July	1.5
August	0.4
September	0.9
October	1.1
November	1.1
December	1.9

[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. 279-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	2.9	72	105
April	6.3	72	105
May	4.1	72	105
June	2.8	--	--
July	1	--	--
August	0.28	--	--
September	0.6	--	--
October	0.8	--	--
November	1	--	--
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. 279-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. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

COYOTE CREEK FROM COYOTE CREEK SOURCE TO THE SYCAN MARSH							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	31 S	12 E	WM	12	SW SW	NORTH 88° 26' 10" EAST, 1097 FEET FROM SW CORNER	12
Lower Reach Boundary	31 S	13 E	WM	25	SW SE	NORTH 73° 9' 43" WEST, 2271.0 FEET FROM SE CORNER	3

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION Water Right Claims 668 – 670 (Wood 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 668 – 670 and that Portion of Claim 612 pertaining to the Wood 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 contests[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 281.

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 Wood River incorporates by reference BIA Claims 668 – 670.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 668 – 670, and that Portion of Claim 612 pertaining to the Wood River and its tributaries on December 1, 2011.

[1] Claim 668: 2733, 2736, 2743, 3067, 3370, 3929, 4058; Claim 669: 2744, 3068, 3371, 3930, 4059; Claim 670: 2745, 3069, 3372, 3931, 4060; Claim 612: 2730, 2735, 2738, 2739, 2740, 3016, 3249, 3314, 3644, 4002.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, and (2) the Mathis Family Trust. 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 668 – 670 and that Portion of Claim 612 pertaining to the Wood 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 668 – 670, 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 668 – 670. 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 descriptions of the lower reach boundaries for Claims 668 and 669, and (2) to recognize rights for Claim 668 for only those portions of claimed reaches that lie within the former reservation boundary.

8. **Findings of Fact**. Within the Proposed Order's "Findings of Fact" section, Findings of Facts 18, 19, and 23 are modified as follows (additions are shown in "<u>underline</u>" text, deletions are shown in "~~strikethrough~~" text):

   a. *Modifications to Finding of Fact 18*:

      18. Claim 668 claimed instream flows in a reach of the Wood River extending from Annie Creek to Agency Lake. The claimed reach is approximately nine miles in length with the northernmost mile extending beyond the boundary of the former reservation. <u>Specifically, the portion of</u>

Claim 668 upstream of approximately River Mile 14.1 lies outside (north of) the former reservation boundary. The remainder of the claimed reach makes up an approximately eight mile segment of the western border of the former reservation. 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 130 cfs to 200 cfs. The claimed flows for riparian habitat maintenance ranged from 320 cfs to 426 cfs. The claimed flows for structural habitat maintenance identified a trigger flow of 290 cfs and a cap flow of 510 cfs. (OWRD Ex. 46 at 1 through 7.)

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 19:*

19. Claim 668 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 33 south, R 7.5 east, Section 10, Southeast ¼, Southwest ¼ (T 33S, R 7.5E, S 10, SE¼ SW¼), distance from SW corner N 65° 15' 37" E, 1,942.1 ft. The lower reach boundary is ~~identified as~~ T 34 S, R 7.5 E, S 24, ~~SW ¼~~, SE¼ SW¼, distance from ~~SW~~ SE corner N° 80 16' 6" W, 4,283 ft. ~~N 78° 41' 24" E, 1,211.8 ft.~~ (OWRD Ex. 46 at 20.) A portion of Claim 668 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, which is located at the northern edge of the NW¼ SW¼ , Section 15, T 33 S, R 7.5 E, W.M., distance from SW corner N 28° 45' 54" E, 1755 ft[2].

Reason for Modification: To identify the portion of the claimed reach that lies outside the boundary of the former reservation; to provide the correct location, as supported by the evidence, for the lower reach boundary for Claim 668.

[2] Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27

c. *Modifications to Finding of Fact 23:*

23. Claim 669 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 33 S, R 7.5 E, S 26, NW¼ NE¼, distance from NE corner S 59° 38' 53" W, 2,564.0 ft. The lower reach boundary is identified as T 34 S, R 7.5 E, S 25, ~~NW ¼~~, NW¼ NE¼ distance from NE corner S 89° 13' 50" W, 1,567.1 ft. (OWRD Ex. 47 at 18-19.)

Reason for Modification: To provide the correct location, as supported by the evidence, for the lower reach boundary for Claim 669.

9. **Conclusions of Law**. Within the Proposed Order's "Conclusions of Law" section, Conclusion of Law 3 is modified as follows (additions are shown in underline text):

3. Claimants are not entitled to claim instream flows outside the boundaries of the former reservation 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 VIII (Proposed Order at 34-35) is replaced in its entirety as follows:

VIII. Claims for instream flows outside the boundaries of the former reservation.

Claimants filed a claim for instream water rights for a portion of the Wood River that lies outside the former reservation boundaries. Claim 668 encompasses a small portion fo the Wood River outside the western boundary of 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,[3] *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.

[3] 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.

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").

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 Yakima 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 doe 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 portion of Claims 668 is 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.

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.8, above.
   f. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.9, above.
   g. The "Opinion" is adopted with modifications, as set forth in Section A.10, 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 668 – 670. 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 descriptions of the lower reach boundaries for Claims 668 and 669, and (2) to recognize rights for Claim 668 for only those portions of claimed reaches that lie within 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 668 – 670 are determined in this Partial Order of Determination for Claims 668 – 670.

3. Based on the file and record herein, IT IS ORDERED that Claims 668 – 670 are approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 668

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 668, PAGES 13-14, 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 WOOD RIVER, tributary to the UPPER KLAMATH LAKE

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# 70829)[4] TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	125	125
February	125	125
March	125	125
April	125	125
May	125	125
June	134	134
July	125	130
August	125	130
September	125	130
October	125	130
November	125	130
December	125	125

[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. 281-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

[4] References to the Water Availability Basin (WAB) for each claim (668-670) 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. 281-US-400 at II-8.)

RIPARIAN HABITAT FLOWS[c]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	270
April	286
May	323
June	352
July	312
August	277
September	254
October	255
November	263
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. 281-US-300 at 50.) 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:

WOOD RIVER FROM ANNIE CREEK TO AGENCY LAKE							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile[5]
Upper Reach Boundary	33 S	7.5 E	WM	15	NW SW	NORTH 28° 45' 54" EAST, 1755 FEET FROM SW CORNER, SECTION 15	14.1
Lower Reach Boundary	34 S	7.5 E	WM	24	SE SW	NORTH 80° 16' 6" WEST, 4283 FEET FROM SE CORNER, SECTION 24	1.5

[5] References to the approximate River Mile for the upper and lower reach boundaries of each claim (668-670) are included solely for OWRD's convenience.

CLAIM NO. 669

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 669, PAGES 18-19, 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: CROOKED CREEK, tributary to the WOOD 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# 70807) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	70	70
February	70	70
March	70	70
April	70	70
May	70	70
June	70	70
July	70	70
August	70	70
September	70	70
October	70	70
November	70	70
December	70	70

[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. 281-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. 281-US-400 at II-8.)

RIPARIAN HABITAT FLOWS[c]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	62
April	62
May	56
June	56
July	53
August	55
September	54
October	61
November	60
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. 281-US-300 at 50.) 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:

CROOKED CREEK FROM SOURCE TO WOOD RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	7.5 E	WM	26	NW NE	SOUTH 59° 38' 53" WEST, 2564 FEET FROM NE CORNER	10.8
Lower Reach Boundary	34 S	7.5 E	WM	25	NW NE	SOUTH 89° 13' 50" WEST, 1567.1 FEET FROM NE CORNER	0

CLAIM NO. 670

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 670, PAGE 16, 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: FORT CREEK, tributary to the WOOD 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# 70810) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow[a] (CFS)	Conditional Physical Habitat Flow[b] (CFS)
January	75	75
February	75	75
March	75	75
April	75	75
May	75	75
June	75	75
July	75	75
August	75	75
September	75	75
October	75	75
November	75	75
December	75	75

[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. 281-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. 281-US-400 at II-8.)

RIPARIAN HABITAT FLOWS[c]

MONTH	Riparian Habitat Base Flow (CFS)
January	--
February	--
March	55
April	56
May	56
June	56
July	56
August	55
September	55
October	55
November	55
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. 281-US-300 at 50.) 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:

FORT CREEK FROM RESERVATION SPRING TO WOOD RIVER							
	Twp	Rng	Mer	Sec	Q-Q	Coordinate Description (NAD 27)	Approx River Mile
Upper Reach Boundary	33 S	7.5 E	WM	23	NW NE	SOUTH 65° 50' 56" WEST, 1759.5 FEET FROM NE CORNER	3.2
Lower Reach Boundary	33 S	7.5 E	WM	34	NE NE	SOUTH 41° 25' 52" WEST, 1578.7 FEET FROM NE CORNER	0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION Water Right Claims 671 – 673 (Klamath 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 671 – 673 and that Portion of Claim 612 pertaining to the Klamath 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 contests[1] were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 282.

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 Klamath River incorporates by reference BIA Claims 671 – 673.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 671 – 673, and that Portion of Claim 612 pertaining to the Klamath River and its tributaries on April 16, 2012.

[1] Claim 671: 2064, 3070, 3257, 3373, 3657, 3932, 4061; Claim 672: 2065, 3071, 3258, 3374, 3658, 3933, 4062; Claim 673: 2066, 3072, 3259, 3375, 3659, 3934, 4063; Claim 612: 2062, 2730, 3016, 3249, 3314, 3644, 4002.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, Upper Basin Contestants, Joint Limited by Klamath Tribes, United States and Klamath Project Water Users (KPWU). 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 671 – 673 and that Portion of Claim 612 pertaining to the Klamath 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, A.10, A.11, and A.12, 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 671 – 673, 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 section titled "Order" is replaced in its entirety as set forth in Section A.11, below. Consistent with Sections A.8, A.9, A.10, A.11 and A.12, below, the outcome of Order has been modified to reflect the denial of Claims 671, 672, and 673.
   i. The "Attachment A" is not adopted, as set forth in Section A.12, below.
   j. The "Amended Order on Stipulation" is adopted with relevant terms and certain exceptions as set forth in Section A.13, below.

8. **Findings of Fact**. Within the Proposed Order's "Findings of Fact" section, Findings of Facts 11, 16, and 17 are modified as follows (additions are shown in "<u>underline</u>" text, deletions are shown in "~~strikethrough~~" text):

   a. *Modifications to Finding of Fact 11*:

      11. Claim 671 identifies the upper and lower reach boundaries' longitude and latitude coordinates <u>(NAD 27)</u> as well as township-range designations. The township-range description for the upper reach boundary is identified as Township 40 south, Range 7 east, Section 6, Southwest ¼ ~~Northeast~~

Northwest ¼ (T 40S, R 7E, S 6, SW¼ ~~NE¼~~ NW¼), distance from NW corner, S 14° 24'25" E, 2,138.4 ft. The lower reach boundary is identified as T 41 S, R 5E, S 13, NE¼ NW¼, distance from NW corner S 70° 58' 60" E, 1918.3 ft. (OWRD Ex. 49 at 17-19).

Reasons for Modifications: To provide the correct location, as supported by the evidence, for the upper reach boundary for Claim 671; to correct a citation to the record.

b. *Modifications to Finding of Fact 16:*

16. Claim 673 claimed instream flows in a reach of the Link River extending from Lake Ewauna to the Link River dam. The claim asserted a water right to support migratory passage of anadromous salmonid fish species into and out of the Klamath River basin. The claim asserted a water right for the period January 1 through December 31 each year. The claimed flows for physical habitat encompassed the natural up to 700 cfs. (OWRD Ex. 51 at 1 through 13.)

Reasons for Modifications: To correct a citation to the record.

c. *Modifications to Finding of Fact 17:*

17. Claim 673 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 34 S, R 7E, S 6, SE¼ NE¼~~ T 38 S, R 9E, S 30, NW¼ SE¼, distance from ~~NW~~ SE corner, ~~S 1° 55'54" E, 1937.7~~ N 37° 42'12" W, 2579 ft. The lower reach boundary is identified as ~~T 35 S, R 7E, S 3, NW¼ NW¼~~ T 38 S, R 9E, S 32, NE¼ SW¼, distance from NW corner, S 30° 40' 00" E, 3963 ft. ~~S 61° 20' 14" E, 337.3~~ (OWRD Ex~~. 5 at 16~~ 51 at 13.)[2]

[2] The map of record (OWRD Ex. 51 at 13) gives a written description of the upper and lower reaches as T 38 S, R 9E, S 30, NW¼ SE¼, distance from SE corner, N 36° 8'23" W, 1762.9 ft.; and T 38 S, R 9E, S 32, NE¼ SW¼, distance from SE corner N 21° 0' 7" W, 1908.3 ft.; respectively. (These are even different from the TRS and bearing and distances cited in the ALJ's Proposed Order.) Plotting these bearing and distances listed on the map of record from the specified corners does not place the upper and lower reaches in the mapped locations according to the notations for the 'Upper Boundary" or "Lower Boundary" noted on the topographic map of record. Thus, the bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27.

Reasons for Modifications: To provide the correct locations, as supported by the evidence, for the upper and lower reach boundaries for Claim 673; to correct a citation to the record.

d. *Additional Finding of Fact 41:*

41. The entirety of the Klamath River reaches claimed in Claims 671, 672 and 673 (as well as the equivalent portion of Claim 612) lie entirely outside the boundaries of the former Klamath Indian Reservation.

Reason for Modification: To more fully set forth findings of fact as supported by a preponderance of evidence in the record.

9. **Conclusions of Law**. Within the Proposed Order's "Conclusions of Law" section, Conclusions of Law 1 through 4 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

1. Claimants are not entitled to claim instream flows outside the boundaries of the former reservation in order to fulfill the purposes of the reservation.

2. Given that Claimants' off-reservation water right claims are outside the scope of the federal reserved water right doctrine, and therefore must be denied as a matter of law, it is unnecessary in this case to determine whether the claimed instream flows are necessary to establish a healthy and productive habitat to allow the exercise of the Klamath Tribes' on-reservation fishing rights guaranteed by the treaty of 1864.

3. It is unnecessary in this case to determine whether the Tribes' treaty rights have ~~not~~ been extinguished on lands no longer owned by the Tribes.

4. It is unnecessary in this case to determine whether the Klamath Restoration Act of 1986 ~~did not limit~~ limited the restoration of the Tribes' treaty rights on former reservation land.

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

10. Opinion. The Proposed Order's "Opinion" section is replaced in its entirety as follows:

It is undisputed that the each of the river reaches claimed in Claims 671, 672 and 673 (as well as the equivalent portion of Claim 612) lies entirely outside the boundaries of the former Klamath Indian Reservation. OWRD concludes that off-reservation water right claims are outside the scope of the federal reserved water right doctrine as a matter of law. The claims must be denied for this reason. It is therefore unnecessary to reach the other legal issues raised in this case.

The statutes and rules governing this proceeding place limits on OWRD's ability to modify or delete factual findings made by the ALJ. OWRD therefore incorporates all of the Proposed Order's factual findings by reference (irrespective of whether those findings appear in the designated "Findings of Fact" section), despite the fact that most of the findings are not relevant given OWRD's determination of the off-reservation water right claim issue.

OWRD's conclusion with respect to off-reservation federal reserved water right claims is discussed in detail below.

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 <u>outside</u> 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,[3] *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").

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 Yakima 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).

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[3] 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.

Finally, the *Kittitas* cases doe 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 portion of Claims 668 is 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. **Order**. The section titled "Order" is replaced as follows:

Claims 671, 672, and 673, and those portions of Claim 612 that pertain to the Klamath River are denied because those claimed reaches lie entirely outside of the former Klamath Indian reservation boundary.

Reasons for Modifications: To reflect the Findings of Fact, Conclusions of Law and Opinion sections.

12. **Attachment A**. Because the claims are denied in their entirety, Attachment A to the Proposed Order, which sets forth flow levels for the reaches claimed, is neither adopted nor incorporated into this Partial Order of Determination.

13. **Amended Order on Stipulation**. On June 19, 2009, the ALJ entered an Order on Klamath Tribes, United States, and Klamath Project Water Users' Stipulation of Conditional Withdrawal of KPWU's Contests to Claims 671, 672, 673 and that Portion of Claim 612 Pertaining to the Klamath River and Conditional and Interim No-Call Provisions by the United States and Klamath Tribes ("Order on Stipulation"). The Order on Stipulation provided that certain of its terms "shall be included in the Proposed Order issued under ORS 183.464(1) and OAR 137-003-0645 and any other Order or Judgment determining" the enumerated claims and contests.

On April 11, 2012, the United States filed the following documents:

AMENDED STIPULATION OF CONDITIONAL WITHDRAWAL OF KWPU'S CONTESTS TO CLAIMS 671, 672, 673 AND THAT PORTION OF CLAIM 612 PERTAINING TO THE KLAMATH RIVER AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES AND ATTACHMENTS 1 AND 2 ("Amended Stipulation");

JOINT MOTION FOR APPROVAL OF AMENDED STIPULATION OF CONDITIONAL WITHDRAWAL OF KPWU'S CONTESTS TO CLAIMS 671, 672, 673 AND THAT PORTION OF CLAIM 612 PERTAINING TO THE KLAMATH RIVER AND CONDITIONAL

AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES; and

[PROPOSED] ORDER ON KLAMATH TRIBES, UNITED STATES, AND KLAMATH PROJECT WATER USERS' AMENDED STIPULATION OF CONDITIONAL WITHDRAWAL OF KPWU'S CONTESTS TO CLAIMS 671, 672, 673 AND THAT PORTION OF CLAIM 612 PERTAINING TO THE KLAMATH RIVER AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES.

The Amended Stipulation is an agreement between Claimants (the Klamath Tribes and the United States), Contestants Klamath Project Water Users ("KPWU"), and the Oregon Water Resources Department ("OWRD"). The Amended Stipulation is comprised of five sections. Section A is a stipulation of facts. Section B provides for the conditional withdrawal of KPWU's contests in this case. Section C provides for a conditional limitation on the exercise of the water rights recognized in this case. Section D requests the ALJ to enter a proposed order implementing the Amended Stipulation. Section E provides general terms pertaining to the Amended Stipulation.

On April 25, 2012, the ALJ entered the Order on Klamath Tribes, United States, and Klamath Project Water Users' Amended Stipulation of Conditional Withdrawal of KPWU's Contests to Claims 671, 672, 673 and that Portion of Claim 612 Pertaining to the Klamath River and Conditional and Interim No-Call Provisions by the United States and Klamath Tribes ("Order on Amended Stipulation"). The Order on Amended Stipulation is intended to implement the Amended Stipulation. The Order on Amended Stipulation supersedes and replaces the Order on Stipulation.

The Amended Order on Stipulation states that certain of its terms "shall be included in the Proposed Order on Claims 671, 672, 673 and 612." However, the Proposed Order does not explicitly include those terms or otherwise reference the Amended Order on Stipulation.

To provide clarity as to the status of the Order on Amended Stipulation, the Adjudicator adopts the Order on Amended Stipulation, [4] except as described below, and incorporates into this Partial Order of Determination the relevant terms, as follows:

1. Regarding Contests 3657, 3658, 3659, and 3644 filed by KPWU,[5] the following terms are a part of this Partial Order of Determination.

[4] Even if the ALJ erred in failing to reference or incorporate the Amended Order on Stipulation in the Proposed Order, OWRD has the authority, which the Adjudicator hereby exercises, to incorporate terms of the Amended Order into this Partial Order of Determination. OAR 137-003-0665; 137-003-0655. The Claimants properly raised this issue in exceptions to which Contestants had an opportunity to respond.

[5] For purposes of this Order, Klamath Project Water Users include Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland Improvement District, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Randy Walthall and Inter-County Title

a. Subject to paragraph 1.b, KPWU may file exceptions in the Circuit Court to the Findings of Fact and Order of Determination on Claims 671, 672, 673, and Claim 612,[6] consistent with ORS 539.150. Nothing in the Amended Stipulation or this "Amended Order on Stipulation" section of this Partial Order of Determination shall limit the exceptions which the United States, the Klamath Tribes and KPWU (collectively, the "Parties to the Amended Stipulation") may pursue or oppose in the Circuit Court, or the use they may make of the Findings of Fact and Order of Determination on Claims 671, 672, 673, and 612 in the Circuit Court. The Parties to the Amended Stipulation have, and have had since the entry of the 2009 Stipulation, no further discovery obligations regarding each other during the contested case process before the Office of Administrative Hearings or OWRD.

b. If none of the events described in paragraph 2.c.i have occurred and the Secretary publishes the notice under section 15.3.4.A of the KLAMATH BASIN RESTORATION AGREEMENT FOR THE SUSTAINABILITY OF PUBLIC AND TRUST RESOURCES AND AFFECTED COMMUNITIES ("Restoration Agreement") (including a notice under section 15.3.4.A following its amendment as provided in section 15.3.4.B of the Restoration Agreement, as applicable), KPWU shall refrain from filing exceptions to the Findings of Fact and Order of Determination or, if exceptions to the Findings of Fact and Order of Determination have already been filed, timely cease any litigation on exceptions and file the necessary pleading to dismiss their exceptions and the conditional withdrawal by KPWU of their Contests 3657, 3658, 3659, and 3644 shall become permanent and no longer conditional.

2. Regarding Claims 671, 672, 673, and 612, the following terms are a part of this Partial Order of Determination, with the following clarification. This Partial Order of Determination denies the claimed water rights in their entirety. As a result, this paragraph 2, which limits the scope or extent of a call made by the Klamath Tribes and United States under any water rights that have been determined under Claims 671, 672, 673, and 612, is inapplicable. This Paragraph 2 is nonetheless incorporated into this Partial Order of Determination in the event that a decree is ultimately entered that approves some part or all of Claims 671, 672, 673, and 612. In that event, this Paragraph 2 would take effect.

a. From the time the Amended Stipulation was filed until the On Project Plan Implementation Deadline, any exercise of the water rights determined for Claims 671, 672, 673, and 612 (the "Tribal Water Rights") shall not result in regulation curtailing use of water under any water rights having a priority date before August 9, 1908.

Co., Inter-County Properties Co., Randolph and Jane Walthall 1995 Trust, Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Collins Products LLC and Plevna District Improvement Company.

[6] As used in this "Amended Order on Stipulation" section of this Partial Order of Determination, the term "Claim 612" refers to Claim 612 insofar as it adopts and incorporates by reference Claims 671, 672 and 673.

b. After the On Project Plan Implementation Deadline, any exercise of the water rights determined for Claims 671, 672, 673, and 612 shall not result in regulation curtailing use of water under any water rights having a priority date before August 9, 1908, except that the exercise of the water rights determined for Claims 671, 672, 673, and 612 may seek regulation such that DIVERSION (as defined in Appendix E-1 of the Restoration Agreement) is equal to the maximum DIVERSION that can occur if Appendix E-1 of the Restoration Agreement has been filed and is in effect. The exception that applies under this paragraph 2.b applies at all times after the On Project Plan Implementation Deadline, regardless of whether Appendix E-1 has in fact been filed and is in effect at that time.

c. If the following events have all occurred, the conditional limitations on the exercise of the Tribal Water Rights set out in paragraph 2.a and paragraph 2.b above shall cease and be of no further force or effect:

   i. The Restoration Agreement has terminated without the Secretary of the Interior having published a notice under either section 15.3.4.A or 15.3.4.C of the Restoration Agreement, or the Secretary of the Interior has published the notice in the Federal Register described in section 15.3.4.C of the Restoration Agreement, or the Klamath Tribes have withdrawn from the Restoration Agreement under section 33.2.2 of the Restoration Agreement; and

   ii. KPWU have fully litigated the Parties to the Amended Stipulation's exceptions to the Findings of Fact and Order of Determination for Claims 671, 672, 673, and 612 consistent with the processes described in section 15.3.2.B.ii.b of the Restoration Agreement or have foregone their final opportunity to fully litigate the Parties to the Amended Stipulation's exceptions pursuant to such processes; and

   iii. Following KPWU's litigation of exceptions as provided in paragraph 2.c.ii immediately above or following KPWU having foregone the final opportunity to fully litigate exceptions as provided in paragraph 2.c.ii immediately above, a judgment or decree (or amended judgment or decree) has been issued regarding Claims 671, 672, 673, and 612 under ORS 539.150(4) or 539.190 and is operative.

d. If none of the events described in paragraph 2.c.i have occurred and the Secretary publishes the notice described in section 15.3.4.A of the Restoration Agreement (including a notice under section 15.3.4.A following its amendment as provided in section 15.3.4.B of the Restoration Agreement, as applicable), then the conditional limitations on the exercise of the Tribal Water Rights set out in paragraph 2.a and paragraph 2.b above shall become permanent and unconditional.

e. For purposes of this paragraph 2, "On Project Plan Implementation Deadline" means the applicable deadline for full and complete implementation of the On Project Plan as established under sections 15.3.8.A or 15.3.8.B of the Restoration Agreement

In addition to the incorporation of these terms, the Adjudicator makes the following findings with respect to the incorporated terms:

1. The provisions in paragraph 2.a. and paragraph 2.b, above, limit the scope or extent of a call made by the Klamath Tribes and United States. As described above, paragraphs 2.a and 2.b, above, are inapplicable under the terms of this Partial Order of Determination. In the event that a water right is ultimately decreed for any part of Claims 671, 672, 673 or 612, and paragraphs 2.a. and 2.b become effective, such provisions do not change the principle that any regulation by OWRD curtailing use of water shall be as provided in ORS 540.045(1)(a), based on the priority of regulated rights, with the latest priority right curtailed first.

2. Nothing in the Amended Stipulation diminishes, affects, defines, or resolves in any way: (a) the rights of Contestants other than KPWU to contest or oppose Claims 671, 672, 673, and 612; or (b) any contests other than Contests 3657, 3658, 3659, and 3644; or (c) any other claims of the Claimants. Nothing in the Amended Stipulation diminishes, affects, defines, or resolves in any way any other water rights or any other claim, contest, or case in the Klamath Basin Adjudication. In addition, nothing in the Amended Stipulation defines, or is intended to define, the scope and attributes of the Tribal Water Rights, either to satisfy the Tribes' treaty rights or otherwise.

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.8, above.
   f. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.9, above.
   g. The "Opinion" is replaced is adopted with modifications, as set forth in Section A.10, above.
   h. The section titled "Order" is replaced in its entirety as set forth in Section A.11, above. Consistent with Sections A.8, A.9, A.10, A.11 and A.12, above, the outcome of Order has been modified to reflect the denial of Claims 671, 672, and 673.

i. The "Attachment A" is not incorporated into this Partial Order of Determination, as set forth in Section A.12, above.

j. The "Amended Order on Stipulation" is adopted with relevant terms and certain exceptions as set forth in Section A.13, above.

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 671 – 673 are determined in this Partial Order of Determination for Claims 671 – 673.

3. Based on the file and record herein, IT IS ORDERED that Claims 671 – 673 are denied and are of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication