

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **709**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 19 cfs the United States claims the flow from 19 to 527 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is January 25, 1907.
6. The claimed place of use is Miller Creek from Section 32 (SWNE), Township 27S, Range 7E to Section 32 (SENE), Township 27S, Range 7E.

## **FINDINGS OF FACT**

7. Miller Creek is within lands reserved for forest purposes by Proclamation on January 25, 1907 for the Cascade National Forest Reserve.
8. The priority date for this instream use is January 25, 1907.
9. The place of use is Miller Creek from Section 32 (SWNE), Township 27S, Range 7E to Section 32 (SENE), Township 27S, Range 7E.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 19 cfs in Miller Creek will ensure that the creek channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Miller Creek channel.
  - b) A flow of up to 527 cfs (with a recurrence interval of twenty five years) is necessary in Miller Creek to scour vegetation from Miller Creek's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for Miller Creek.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in cursive script, reading "Richard D. Bailey". The signature is written in black ink on a white background.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **710**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is January 25, 1907.
4. The claimed place of use is Miller Creek from Section 32 (SWNE), Township 27S, Range 7E to Section 32 (SENE) Township 27S, Range 7E.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 39 cfs  |
| June                      | 41 cfs  |
| July                      | 22 cfs  |
| August                    | 12 cfs  |
| September                 | 8.8 cfs |
| October                   | 8.4 cfs |
| November 1 to November 15 | 8.1 cfs |

## **FINDINGS OF FACT**

6. Miller Creek (as described in paragraph 4) is within lands reserved for forest purposes by Proclamation of January 25, 1907.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **711**  
Federal Reserve Claim

**Current Claimant(s) of Record:**

United States of America, Forest Service  
1220 SW 3<sup>rd</sup>, Room 1734  
Portland, OR 97204

**Original Claimant(s):**

United States of America, Forest Service

The general location of the claimed use is Township 27 South, Range 7 East, W.M.

This preliminary evaluation takes into consideration all information available as of August 23, 1999.

**CLAIM INFORMATION / FINDINGS OF FACT**

1. The claim is for an instream flow ranging from 8.1 to 527 cubic feet per second on Miller Creek, tributary to the Williamson River, for fish and outdoor recreation pursuant to the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 *et. seq.*
2. The claim is based on the Multiple Use Sustained Yield Act.
3. The claimed period of use is January 1 through December 31 of each year.
4. The claimed priority date is June 12, 1960.

**CONCLUSION**

5. The Forest Service has asserted that it is entitled to the claimed flows under the Multiple Use Sustained Yield Act (MUSYA). The United States Supreme Court has determined, in *U.S. v. New Mexico*, 438 US 696 (1978), that by enacting MUSYA, Congress did not change or add to the primary purpose of a forest created before MUSYA. Therefore, Congress did not reserve additional water for such forests when it enacted MUSYA. These claims are for flows within the portion of the Winema National Forest which was created before the passage of MUSYA. MUSYA creates no reserved rights. The claim is denied.

Dated the 4th day of October, 1999.



Richard D. Bailey, Adjudicator

Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **712**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 99 cfs the United States claims the flow from 99 to 1195 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is November 15, 1974.
6. The claimed place of use is the Williamson River from Section 24 (NENE), Township 31S, Range 10E to Section 7 (NWSW), Township 31S, Range 11E.

## FINDINGS OF FACT

7. The Williamson River is within lands reserved for forest purposes by Proclamation on November 15, 1974 for the Winema National Forest.
8. The priority date for this instream use is November 15, 1974.
9. The place of use is the Williamson River from Section 24 (NENE), Township 31S, Range 10E to Section 7 (NWSW), Township 31S, Range 11E.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 99 cfs in the Williamson River will ensure that the river channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Williamson River channel.
  - b) A flow of up to 1195 cfs (with a recurrence interval of twenty five years) is necessary in the Williamson River to scour vegetation from the Williamson River's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for Williamson River.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in cursive script, reading "Richard D. Bailey", written in black ink on a white background.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **713**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is November 15, 1974.
4. The claimed place of use is the Williamson river from Section 24 (NENE), Township 31S, Range 10E to Section 7 (NWSW) Township 31S, Range 11E, WM.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 116 cfs |
| June                      | 93 cfs  |
| July                      | 64 cfs  |
| August                    | 57 cfs  |
| September                 | 60 cfs  |
| October                   | 64 cfs  |
| November 1 to November 15 | 64 cfs  |

## **FINDINGS OF FACT**

6. The Williamson River (as described in paragraph 4) is within lands reserved for forest purposes by Declaration of November 15, 1974.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **714**  
Federal Reserve Claim

**Current Claimant(s) of Record:**

United States of America, Forest Service  
1220 SW 3<sup>rd</sup>, Room 1734  
Portland, OR 97204

**Original Claimant(s):**

United States of America, Forest Service

The general location of the claimed use is Township 31 South, Range 10 East, W.M.

This preliminary evaluation takes into consideration all information available as of August 23, 1999.

**CLAIM INFORMATION / FINDINGS OF FACT**

1. The claim is for an instream flow ranging from 57 to 1195 cubic feet per second on the Williamson River, tributary to Klamath Lake, for fish and outdoor recreation pursuant to the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 *et. seq.*.
2. The claim is based on the Multiple Use Sustained Yield Act.
3. The claimed period of use is January 1 through December 31 of each year.
4. The claimed priority date is November 15, 1975.

**CONCLUSION**

5. The Forest Service has asserted that it is entitled to the claimed flows under the Multiple Use Sustained Yield Act (MUSYA). The United States Supreme Court has determined, in *U.S. v. New Mexico*, 438 US 696 (1978), that by enacting MUSYA, Congress did not change or add to the primary purpose of a forest created before MUSYA. Therefore, Congress did not reserve additional water for such forests when it enacted MUSYA. These claims are for flows within the portion of the Winema National Forest which was created before the passage of MUSYA. MUSYA creates no reserved rights. The claim is denied.

Dated the 4th day of October, 1999.



Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **715**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 99 cfs the United States claims the flow from 99 to 1195 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is November 15, 1974.
6. The claimed place of use is the Williamson River from Section 12 (SENE), Township 31S, Range 10E to Section 12 (NWNE), Township 31S, Range 10E.

## FINDINGS OF FACT

7. The Williamson River is within lands reserved for forest purposes by Proclamation on November 15, 1974 for the Winema National Forest.
8. The priority date for this instream use is November 15, 1974.
9. The place of use is the Williamson River from Section 12 (SENE), Township 31S, Range 10E to Section 12 (NWNE), Township 31S, Range 10E.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 99 cfs in the Williamson River will ensure that the river channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Williamson River channel.
  - b) A flow of up to 1195 cfs (with a recurrence interval of twenty five years) is necessary in the Williamson River to scour vegetation from the Williamson River's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for the Williamson River.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in cursive script, reading "Richard D. Bailey", written in black ink on a white background.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **716**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is November 15, 1974.
4. The claimed place of use is the Williamson river from Section 12 (SENE), Township 31S, Range 10E to Section 12 (NWNE) Township 31S, Range 10E, WM.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 116 cfs |
| June                      | 93 cfs  |
| July                      | 64 cfs  |
| August                    | 57 cfs  |
| September                 | 60 cfs  |
| October                   | 64 cfs  |
| November 1 to November 15 | 64 cfs  |

## **FINDINGS OF FACT**

6. The Williamson River (as described in paragraph 4) is within lands reserved for forest purposes by Declaration of November 15, 1974.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **717**  
Federal Reserve Claim

**Current Claimant(s) of Record:**

United States of America, Forest Service  
1220 SW 3<sup>rd</sup>, Room 1734  
Portland, OR 97204

**Original Claimant(s):**

United States of America, Forest Service

The general location of the claimed use is Township 31 South, Range 10 East, W.M.

This preliminary evaluation takes into consideration all information available as of August 23, 1999.

**CLAIM INFORMATION / FINDINGS OF FACT**

1. The claim is for an instream flow ranging from 57 to 1195 cubic feet per second on the Williamson River, tributary to Klamath Lake, for fish and outdoor recreation pursuant to the Multiple Use Sustained Yield Act, June 12, 1960, 16 U.S.C. 528 *et. seq.*.
2. The claim is based on the Multiple Use Sustained Yield Act.
3. The claimed period of use is January 1 through December 31 of each year.
4. The claimed priority date is November 15, 1974.

**CONCLUSION**

5. The Forest Service has asserted that it is entitled to the claimed flows under the Multiple Use Sustained Yield Act (MUSYA). The United States Supreme Court has determined, in *U.S. v. New Mexico*, 438 US 696 (1978), that by enacting MUSYA, Congress did not change or add to the primary purpose of a forest created before MUSYA. Therefore, Congress did not reserve additional water for such forests when it enacted MUSYA. These claims are for flows within the portion of the Winema National Forest which was created before the passage of MUSYA. MUSYA creates no reserved rights. The claim is denied.

Dated the 4th day of October, 1999.



Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **718**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 15 cfs the United States claims the flow from 15 to 370 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is October 14, 1935.
6. The claimed place of use is Brownsworth Creek from Section 36 (SWSW), Township 36S, Range 15E to Section 36 (SWSW), Township 36S, Range 15E.

## FINDINGS OF FACT

7. Brownsworth Creek is within lands reserved for forest purposes by Proclamation on October 14, 1935 for the Fremont National Forest Reserve.
8. The priority date for this instream use is October 14, 1935.
9. The place of use is Brownsworth Creek from Section 36 (SWSW), Township 36S, Range 15E to Section 36 (SWSW), Township 36S, Range 15E.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 15 cfs in Brownsworth Creek will ensure that the creek channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Brownsworth Creek channel.
  - b) A flow of up to 370 cfs (with a recurrence interval of twenty five years) is necessary in Brownsworth Creek to scour vegetation from Brownsworth Creek's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for Brownsworth Creek.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, reading "Richard D. Bailey". The signature is written in a cursive style and is positioned above a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **719**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is October 14, 1935.
4. The claimed place of use is Brownsworth Creek from Section 36 (SWSW), Township 36S, Range 15E to Section 36 (SWSW) Township 36S, Range 15E, WM.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 36 cfs  |
| June                      | 16 cfs  |
| July                      | 6.1 cfs |
| August                    | 4.4 cfs |
| September                 | 4.6 cfs |
| October                   | 5.2 cfs |
| November 1 to November 15 | 6.3 cfs |

## **FINDINGS OF FACT**

6. Brownsworth Creek (as described in paragraph 4) is within lands reserved for forest purposes by Proclamation of October 14, 1935.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **720**  
Federal Reserve Claim

**Current Claimant(s) of Record:**

United States of America, Forest Service  
1220 SW 3<sup>rd</sup>, Room 1734  
Portland, OR 97204

**Original Claimant(s):**

United States of America, Forest Service

The general location of the claimed use is Township 36 South, Range 15 East, W.M.

This preliminary evaluation takes into consideration all information available as of August 23, 1999.

**CLAIM INFORMATION / FINDINGS OF FACT**

1. The claim is for an instream flow ranging from 4.4 to 370 cubic feet per second on Brownsworth Creek, tributary to the South Fork of the Sprague River, for fish and outdoor recreation pursuant to the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 et. seq.
2. The claim is based on the Multiple Use Sustained Yield Act.
3. The claimed period of use is January 1 through December 31 of each year.
4. The claimed priority date is June 12, 1960.

**CONCLUSION**

5. The Forest Service has asserted that it is entitled to the claimed flows under the Multiple Use Sustained Yield Act (MUSYA). The United States Supreme Court has determined, in *U.S. v. New Mexico*, 438 US 696 (1978), that by enacting MUSYA, Congress did not change or add to the primary purpose of a forest created before MUSYA. Therefore, Congress did not reserve additional water for such forests when it enacted MUSYA. These claims are for flows within the Fremont National Forest, which was created before the passage of MUSYA. MUSYA creates no reserved rights. The claim is denied.

Dated the 4th day of October, 1999.



Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **721**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 15 cfs the United States claims the flow from 15 to 370 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is October 14, 1935.
6. The claimed place of use is Brownsworth Creek from Section 2 (NENE), Township 37S, Range 15E to Section 2 (SENE), Township 37S, Range 15E.

## FINDINGS OF FACT

7. Brownsworth Creek is within lands reserved for forest purposes by Proclamation on October 14, 1935 for the Fremont National Forest Reserve.
8. The priority date for this instream use is October 14, 1935.
9. The place of use is Brownsworth Creek from Section 2 (NENE), Township 37S, Range 15E to Section 2 (SENE), Township 37S, Range 15E.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 15 cfs in Brownsworth Creek will ensure that the creek channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Brownsworth Creek channel.
  - b) A flow of up to 370 cfs (with a recurrence interval of twenty five years) is necessary in Brownsworth Creek to scour vegetation from Brownsworth Creek's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for Brownsworth Creek.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in cursive script, reading "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **722**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is October 14, 1935.
4. The claimed place of use is Brownsworth Creek from Section 2 (NENE), Township 37S, Range 15E to Section 2 (SENE) Township 37S, Range 15E, WM.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 36 cfs  |
| June                      | 16 cfs  |
| July                      | 6.1 cfs |
| August                    | 4.4 cfs |
| September                 | 4.6 cfs |
| October                   | 5.2 cfs |
| November 1 to November 15 | 6.3 cfs |

## **FINDINGS OF FACT**

6. Brownsworth Creek (as described in paragraph 4) is within lands reserved for forest purposes by Proclamation of October 14, 1935.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, reading "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **723**  
Federal Reserve Claim

**Current Claimant(s) of Record:**

United States of America, Forest Service  
1220 SW 3<sup>rd</sup>, Room 1734  
Portland, OR 97204

**Original Claimant(s):**

United States of America, Forest Service

The general location of the claimed use is Township 37 South, Range 15 East, W.M.

This preliminary evaluation takes into consideration all information available as of August 23, 1999.

**CLAIM INFORMATION / FINDINGS OF FACT**

1. The claim is for an instream flow ranging from 4.4 to 370 cubic feet per second on Brownsworth Creek, tributary to the South Fork of the Sprague River, for fish and outdoor recreation pursuant to the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 *et. seq.*.
2. The claim is based on the Multiple Use Sustained Yield Act.
3. The claimed period of use is January 1 through December 31 of each year.
4. The claimed priority date is June 12, 1960.

**CONCLUSION**

5. The Forest Service has asserted that it is entitled to the claimed flows under the Multiple Use Sustained Yield Act (MUSYA). The United States Supreme Court has determined, in *U.S. v. New Mexico*, 438 US 696 (1978), that by enacting MUSYA, Congress did not change or add to the primary purpose of a forest created before MUSYA. Therefore, Congress did not reserve additional water for such forests when it enacted MUSYA. These claims are for flows within the Fremont National Forest, which was created before the passage of MUSYA. MUSYA creates no reserved rights. The claim is denied.

Dated the 4th day of October, 1999.



Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **724**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 81 cfs the United States claims the flow from 81 to 1921 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is October 14, 1935.
6. The claimed place of use is the Sycan River from Section 16 (NENE), Township 33S, Range 15E to Section 24 (SWSW), Township 32S, Range 14E.

## FINDINGS OF FACT

7. The Sycan River is within lands reserved for forest purposes by Proclamation on October 14, 1935 for the Fremont National Forest Reserve.
8. The priority date for this instream use is October 14, 1935.
9. The place of use is the Sycan River from Section 16 (NENE), Township 33S, Range 15E to Section 24 (SWSW), Township 32S, Range 14E.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 81 cfs in the Sycan River will ensure that the river channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Sycan River channel.
  - b) A flow of up to 1921 cfs (with a recurrence interval of twenty five years) is necessary in the Sycan River to scour vegetation from the Sycan River's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for the Sycan River.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **725**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is October 14, 1935.
4. The claimed place of use is the Sycan River from Section 16 (NENE), Township 33S, Range 15E to Section 24 (SWSW) Township 32S, Range 14E, WM.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 193 cfs |
| June                      | 54 cfs  |
| July                      | 15 cfs  |
| August                    | 9.4 cfs |
| September                 | 7.5 cfs |
| October                   | 7.7 cfs |
| November 1 to November 15 | 9.5 cfs |

## **FINDINGS OF FACT**

6. The Sycan River (as described in paragraph 4) is within lands reserved for forest purposes by Proclamation of October 14, 1935.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **726**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 3, 1999.

**ELEMENTS OF A CLAIM FOR FAVORABLE CONDITIONS OF FLOW**

1. Claims for instream flow for “favorable conditions of water flows” under the Organic Act (16 USC § 473 *et seq.*) for “channel maintenance” are proper if the United States can prove as a factual matter:
  - a. That an instream flow claim for channel maintenance in the national forest is necessary to assure favorable conditions of water flows, thereby enhancing the quantity of water available for water users.
  - b. That the requested amount is the minimum quantity of water which must be reserved for the primary purpose of the reservation which is to secure favorable conditions of water flows within the boundaries of the national forest.

**CLAIM INFORMATION**

2. The claim was filed on April 19, 1997 and amended on August 3, 1999.
3. The claim provides that when the natural flow is greater than or equal to 281 cfs the United States claims the flow from 281 to 3552 cfs.
4. The claimed period of use is January 1 to December 31.
5. The claimed priority date is April 15, 1961.
6. The claimed place of use is the Sycan River from Section 12 (NENE), Township 34S, Range 11E to Section 31 (SWSE), Township 34S, Range 12E.

## FINDINGS OF FACT

7. The Sycan River is within lands reserved for forest purposes by Proclamation on April 15, 1961.
8. The priority date for this instream use is April 15, 1961.
9. The place of use is the Sycan River from Section 12 (NENE), Township 34S, Range 11E to Section 31 (SWSE), Township 34S, Range 12S.
10. The period of use is January 1 to December 31.
11. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to maintain stream channels in an open condition over time to ensure and enhance the delivery of water to downstream users.
12. The USFS instream flow claim for channel maintenance is for the minimum amount of streamflow necessary to protect forests and the integrity of stream channels for the conveyance of streamflow such that forest lands can contribute to a sustainable water supply to downstream water users. Without the claimed flows, the stream channel would have reduced capacity to convey water as flows would be impeded by stream sediment thereby increasing the risk of flooding and decreasing the efficiency of water delivery.
13. The minimum quantity of water needed for channel maintenance is as follows:
  - a) A flow equal to or greater than 281 cfs in the Sycan River will ensure that the river channel's "framework particles" are moved at such a rate and with such frequency as to maintain the channel capacity of the Sycan River channel.
  - b) A flow of up to 3552 cfs (with a recurrence interval of twenty five years) is necessary in the Sycan River to scour vegetation from the Sycan River's active channel and maintain the active flood plain.

## CONCLUSION

14. The elements of an instream claim for favorable conditions of flows under the Organic Act, 16 USC § 473 *et seq.* are established for the Sycan River.
15. This claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in cursive script, reading "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **727**  
USFS claim

**Claimant(s) of Record:**

United States of America,  
Forest Service (USFS)  
1220 S.W. 3<sup>rd</sup>, Room 1734  
Portland OR 97204

This preliminary evaluation takes into consideration all information available as of August 9, 1999.

**ELEMENTS OF A CLAIM FOR TIMBER PROTECTION**

1. Claims for instream flow for the purpose of controlling and preventing forest fires to protect timber under the Organic Act (16 USC § 473 *et seq.*) are proper if the United States can prove as a factual matter:
  - a. That the instream flows claimed are the minimum needed to fight fires and/or act as a fire barrier in order to protect timber in the national forest.

**CLAIM INFORMATION**

2. The claim was filed on August 3, 1999.
3. The claimed priority date is October 14, 1935.
4. The claimed place of use is the Sycan River from Section 12 (NENE), Township 34S, Range 11E to Section 31 (SWSE) Township 31S, Range 12E, WM.
5. The claimed amount is:

|                           |         |
|---------------------------|---------|
| May                       | 357 cfs |
| June                      | 113 cfs |
| July                      | 21 cfs  |
| August                    | 10 cfs  |
| September                 | 13 cfs  |
| October                   | 17 cfs  |
| November 1 to November 15 | 22 cfs  |

## **FINDINGS OF FACT**

6. The Sycan River (as described in paragraph 4) is within lands reserved for forest purposes by Proclamation of October 14, 1935.
7. The risk of fire on the forests is greatest from June through October.
8. Maintenance of or preservation of rivers, streams, creeks, lakes and ponds as wet areas is important for successful fire suppression efforts.

## **CONCLUSION**

9. The United States has established that the claimed flows are the minimum quantity of instream flows needed for the purpose of a fire barrier to protect timber. Therefore, this claim is APPROVED.

Dated the 4th day of October, 1999.

A handwritten signature in black ink, appearing to read "Richard D. Bailey", written over a horizontal line.

Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication

**Summary - Preliminary Evaluation of Claims  
Klamath Basin General Stream Adjudication**

Claim No. **728**  
Federal Reserve Claim

**Current Claimant(s) of Record:**

United States of America, Forest Service  
1220 SW 3<sup>rd</sup>, Room 1734  
Portland, OR 97204

**Original Claimant(s):**

United States of America, Forest Service

The general location of the claimed use is Township 34 South, Range 11 East, W.M.

This preliminary evaluation takes into consideration all information available as of August 23, 1999.

**CLAIM INFORMATION / FINDINGS OF FACT**

1. The claim is for an instream flow ranging from 5.8 to 3552 cubic feet per second on the Sycan River, tributary to the Sprague River, for fish and outdoor recreation pursuant to the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 *et. seq.*
2. The claim is based on the Multiple Use Sustained Yield Act.
3. The claimed period of use is January 1 through December 31 of each year.
4. The claimed priority date is April 15, 1961.

**CONCLUSION**

5. The Forest Service has asserted that it is entitled to the claimed flows under the Multiple Use Sustained Yield Act (MUSYA). The United States Supreme Court has determined, in *U.S. v. New Mexico*, 438 US 696 (1978), that by enacting MUSYA, Congress did not change or add to the primary purpose of a forest created before MUSYA. Therefore, Congress did not reserve additional water for such forests when it enacted MUSYA. These claims are for flows within the Fremont National Forest, which was created before the passage of MUSYA. MUSYA creates no reserved rights. The claim is denied.

Dated the 4th day of October, 1999.



Richard D. Bailey, Adjudicator  
Klamath Basin General Stream Adjudication