

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of the UNITED)	PARTIAL ORDER OF
STATES DEPARTMENT OF INTERIOR,)	DETERMINATION
BUREAU OF LAND MANAGEMENT)	
_____)	
)	Water Right Claim 376

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. Claim 376 (Claimant: UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT) and its associated contests (48, 282, 517, 750, 987, 1222, 1456, 1805, 2061, 2257, 2493, 2884, 3242, 3623, 3991, 4245, 4479, 4712, 4953, 5188, and 5421) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 6.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 376 on February 12, 2003.
3. No exceptions were filed to the Proposed Order.
4. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.5, 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 376. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

5. **Findings of Fact.** The following sentence is added to the Proposed Order Finding of Fact #2 (additions are shown in “underline” text):

Claim No. 376 was timely amended on October 1, 1999.

Reason for Modifications: the ALJ’s proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the “Findings of Fact” is adopted with modifications, as set forth in Section A.5, above, 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 376. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The instream flows approved for the two purposes, (1) recreation and (2) fish life & fish habitat, are not additive.
4. The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (“Act”) is a valid basis for this claim, including the claimed purpose of use. The Act established the national policy that certain rivers with outstanding values shall be preserved in free-flowing condition, and that they shall be protected for the benefit and enjoyment of present and future generations. 16 USC §§ 1271-1286, 1271. The Act’s purpose is to implement that policy through the creation of a National Wild and Scenic River system. 16 USC § 1272. The Act expressly reserves water for that purpose:

Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes.

16 USC § 1284(c). The Forest Service is entitled to a reserved right for the amount of water necessary to accomplish the purposes for which each wild and scenic reach was created. *See In Re SRBA, Wild & Scenic River Claims, Consolidated Subcase 75-13316, at 8-11 (Idaho Dist. Ct., July 27, 1998) (memorandum decision granting, in part, and denying, in part, the United States’ motion for summary judgment on reserved water rights claims).*

5. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 376 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 376

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 376, PAGE 120

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

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:

INSTREAM USE FOR RECREATION (BOATING AND SCENIC ENJOYMENT), AND FISH LIFE & FISH HABITAT

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):	
	PURPOSE	
	RECREATION ^a	FISH LIFE & HABITAT ^a
Jan 1 to Mar 31		525
Apr 1 to Memorial Day		625
Memorial Day to June 15	1500	625
June 16 to Sept 30	1500	525
Oct 1 to Dec 31		525

^a INSTREAM FLOWS FOR THE TWO PURPOSES, RECREATION AND FISH LIFE & HABITAT, ARE NOT ADDITIVE

DATE OF PRIORITY: SEPTEMBER 22, 1994

THE PLACE OF USE IS LOCATED AS FOLLOWS:

THE UPPER KLAMATH WILD AND SCENIC RIVER, BEING THE KLAMATH RIVER FROM THE J.C. BOYLE DAM POWERHOUSE TO THE OREGON-CALIFORNIA BORDER								
	Twp	Rng	Mer	Sec	Q-Q	G-Lot	Coordinate Description	Approx River Mile
Upper Reach Boundary	40 S	6 E	WM	14	SENE		SOUTH 8° 26' WEST, 1970 FEET FROM NE CORNER	220.4
Lower Reach Boundary	41 S	5 E	WM	13	NE NW	3	SOUTH 89° 52' WEST, 600 FEET FROM MILE POST 109 ON OREGON-CALIFORNIA STATE BOUNDARY	209.3

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication