

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of the)	PARTIAL ORDER OF
UNITED STATES DEPARTMENT OF)	DETERMINATION
AGRICULTURE, FOREST SERVICE)	
)	
)	Water Right Claim 377

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 UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS) timely submitted a Statement and Proof of Claim (Claim 377) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication claiming a federal reserved water right under the Organic Administration Act of 1897, 16 U.S.C. §§ 473-475, 477-482 and 551 (Organic Act), and under the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-531(MUSYA).
2. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the portion of the claim under the Organic Act was approved and the portion of the claim under MUSYA was denied.
3. On May 5, 2000, the Claimant, USFS, timely filed Contest 2070 to the Preliminary Evaluation of Claim 377.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 49 to the Claim and/or Preliminary Evaluation of Claim 377.
5. On May 1, 2000, Leonard Baio timely filed Contest 283 to the Claim and/or Preliminary Evaluation of Claim 377.
6. On May 2, 2000, Gary Strong timely filed Contest 518 to the Claim and/or Preliminary Evaluation of Claim 377.

7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 751 to the Claim and/or Preliminary Evaluation of Claim 377.
8. On May 2, 2000, Robert Bartell timely filed Contest 988 to the Claim and/or Preliminary Evaluation of Claim 377.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1223 to the Claim and/or Preliminary Evaluation of Claim 377.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1457 to the Claim and/or Preliminary Evaluation of Claim 377.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1806 to the Claim and/or Preliminary Evaluation of Claim 377.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2258 to the Claim and/or Preliminary Evaluation of Claim 377.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2494 to the Claim and/or Preliminary Evaluation of Claim 377.
14. On May 8, 2000, John Briggs timely filed Contest 4246 to the Claim and/or Preliminary Evaluation of Claim 377.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4480 to the Claim and/or Preliminary Evaluation of Claim 377.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4713 to the Claim and/or Preliminary Evaluation of Claim 377.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 4954 to the Claim and/or Preliminary Evaluation of Claim 377.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5189 to the Claim and/or Preliminary Evaluation of Claim 377.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5422 to the Claim and/or Preliminary Evaluation of Claim 377.
20. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3668: 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., 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 Pritchard¹, Don Vincent², Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

21. 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 USFS as Case 007.
22. On July 2, 2002, the following contestants withdrew with prejudice their respective contest: Leonard Baio, Gary Strong, Flynn Brothers, Robert Bartell, Margaret Jacobs, Carolyn Obenchain, Rodney Z. James, Newman Enterprise (Douglas Newman), Francis Loving Trust, Hilda Francis Trustee, John Briggs, Peter M. Bourdet, Vincent Lee Briggs, Thomas William Mallams, Thomas H. Bentley, Thomas E. Stephens, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL*'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
23. On December 26, 2002, the Klamath Project Water Users withdrew with prejudice Contest 3668. *See* WITHDRAWAL OF KLAMATH PROJECT WATER USER'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 26, 2002).
24. On December 30, 2002, the USFS amended Claim 377 by reducing the claim as follows: The "[p]ortion of this claim based on the Multiple Use Sustained Yield Act of June 12, 1960, 16 U.S.C. 528 *et seq.* is deleted," and the rate was reduced "from .5654 cfs as originally claimed, to .4928 cfs."
25. On March 11, 2003, the Claimant, USFS, withdrew with prejudice Contest 2070, the remaining contest to Claim 377. *See* UNITED STATES NOTICE OF WITHDRAWAL OF CONTESTS (Mar. 11, 2003).
26. On April 2, 2003, the Adjudicator withdrew Case 007 from the Office of Administrative Hearings.
27. The place of use underlying Claim 377 is within a federal reservation of land that is owned by the Claimant.
28. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897, the date of reservation is the priority date of a federal reserved water right. This claim contains two reservation dates as follows: (1) the reservation date of April 24, 1906 is based on a Presidential Proclamation of April 24, 1906, and (2) the reservation date of March 2, 1907 is based on a Presidential

¹ Berlva Pritchard voluntarily withdrew from Contest 3668 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

² Don Vincent voluntarily withdrew from Contest 3668 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

Proclamation of March 2, 1907. The priority date applicable to each aspect of the claim is set forth in the Water Right Claim Description below.

29. The rate, maximum acre-feet per year allowed, and season of use claimed, as amended by the USFS on December 30, 2002, are no more than necessary to fulfill the primary purposes of the reservation.

B. DETERMINATION

1. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim, including the claimed purposes of use. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
2. Based on the file and record herein, IT IS ORDERED that Claim 377 is approved as amended by the USFS and as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 377

CLAIM MAP REFERENCE:

USFS MAPS FILED 1997, 97-401-0107 THROUGH 97-401-0110 (A1);
MYLAR FILED AS CLAIM # 377, PAGES 173 THROUGH 266; and
OWRD INVESTIGATION MAPS

CLAIMANT: UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
1220 SW 3RD ROOM 1734
PORTLAND, OR 97204

PURPOSE or USE:

ROAD CONSTRUCTION, MAINTENANCE AND DUST SUPPRESSION OF ROADS
NECESSARY FOR TIMBER PRODUCTION, TIMBER HARVESTING, AND PROTECTION
FROM FIRE; AND
FIRE SUPPRESSION.

PERIOD OF ALLOWED USE: MARCH 1 THROUGH NOVEMBER 30

RATE OF USE:

0.0224 CUBIC FEET PER SECOND (CFS) FROM EACH POINT OF DIVERSION, NOT TO
EXCEED A TOTAL OF 0.4928 CFS

THE SOURCES OF WATER, DATES OF PRIORITY, AND POINTS OF DIVERSION LOCATIONS ARE AS FOLLOWS:

Source		Priority Date	Point of Diversion Location				
All Tributary to the Klamath River			Twp	Rng	Mer	Sec	Q-Q
USFS-ID	Name						
48W	Abbot Creek	April 24, 1906	40 S	1 E	WM	19	NE SE
20W	Little Ivy Creek	April 24, 1906	40 S	1 E	WM	20	SE SE
25W	Mill Creek	April 24, 1906	40 S	1 E	WM	27	SE SE
49W	Costello Creek	April 24, 1906	40 S	1 E	WM	29	NW NW
21W	Mouse Creek	April 24, 1906	40 S	1 E	WM	29	SE NE
19W	West Fork Grouse Creek	April 24, 1906	40 S	1 E	WM	31	NW NE
13W	West Branch	March 2, 1907	40 S	1 W	WM	35	SW NE
17W	Long John Creek	March 2, 1907	41 S	1 W	WM	1	NE SW
16W	Drip Creek	March 2, 1907	41 S	1 W	WM	1	SE NW
15W	Long John Creek	March 2, 1907	41 S	1 W	WM	1	SW NE
18W	Little Joel Creek	March 2, 1907	41 S	1 W	WM	12	NW NE
11W	Cow Creek	March 2, 1907	41 S	1 W	WM	11	NE NW
47W	King Creek	March 2, 1907	41 S	1 W	WM	15	NW SE
12W	West Branch Long John Creek	March 2, 1907	41 S	1 W	WM	2	SW SE
10W	Red Mountain Creek	March 2, 1907	41 S	1 W	WM	3	NE NW
46W	Slow Creek	March 2, 1907	41 S	1 W	WM	3	SE NW
9W	Red Mountain Creek	March 2, 1907	41 S	1 W	WM	3	SE NW
4W	Cow Creek	March 2, 1907	41 S	1 W	WM	4	SE SW
1W	Cow Creek	March 2, 1907	41 S	1 W	WM	8	NW NW
2W	Cottage Glade	March 2, 1907	41 S	1 W	WM	8	SW SE
3W	Cottage Glade	March 2, 1907	41 S	1 W	WM	9	NW SW
45W	Cow Creek	March 2, 1907	41 S	2 W	WM	13	NE NW

THE PLACES OF USE LOCATIONS ARE AS FOLLOWS:

USFS-ID	Name	Twp	Rng	Mer	Sec	Q-Q
48W	Abbot Creek	40 S	1 E	WM	19	NE SE
20W	Little Ivy Creek	40 S	1 E	WM	20	SE SE
25W	Mill Creek	40 S	1 E	WM	27	SE SE
49W	Costello Creek	40 S	1 E	WM	29	NW NW
21W	Mouse Creek	40 S	1 E	WM	29	SE NE

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11W	Cow Creek	41 S	1 W	WM	11	NE NW
47W	King Creek	41 S	1 W	WM	15	NW SE
12W	West Branch Long John Creek	41 S	1 W	WM	2	SW SE
10W	Red Mountain Creek	41 S	1 W	WM	3	NE NW
46W	Slow Creek	41 S	1 W	WM	3	SE NW
9W	Red Mountain Creek	41 S	1 W	WM	3	SE NW
4W	Cow Creek	41 S	1 W	WM	4	SE SW
1W	Cow Creek	41 S	1 W	WM	8	NW NW
2W	Cottage Glade	41 S	1 W	WM	8	SW SE
3W	Cottage Glade	41 S	1 W	WM	9	NW SW
45W	Cow Creek	41 S	2 W	WM	13	NE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication