

2-28-2014

## Case 281 Partial Order of Determination

Dwight French

*Adjudicator, Klamath Basin General Stream Adjudication*

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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) 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 “underline” text, deletions are shown in “~~strike through~~” 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. Specifically, the portion of 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<sup>2</sup>.

**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.

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<sup>2</sup> 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, ~~NW¼~~, 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 (9<sup>th</sup> 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,<sup>3</sup> *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

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<sup>3</sup> 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.

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 Yakama 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 do 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 (9<sup>th</sup> 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 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.

**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 11<sup>TH</sup> 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)<sup>4</sup> TO PROTECT THE FOLLOWING FLOWS THROUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

MONTH	Physical Habitat Flow <sup>a</sup> (CFS)	Conditional Physical Habitat Flow <sup>b</sup> (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

<sup>a</sup> 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.

<sup>4</sup> 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<sup>c</sup>**

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	--

- <sup>c</sup> 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 <sup>5</sup>
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

<sup>5</sup> 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 11<sup>TH</sup> 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 <sup>a</sup> (CFS)	Conditional Physical Habitat Flow <sup>b</sup> (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

<sup>a</sup> 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.

<sup>b</sup> 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<sup>c</sup>**

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	--

<sup>c</sup> 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 11<sup>TH</sup> 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 <sup>a</sup> (CFS)	Conditional Physical Habitat Flow <sup>b</sup> (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

<sup>a</sup> 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.

<sup>b</sup> 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<sup>c</sup>**

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	--

<sup>c</sup> 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.

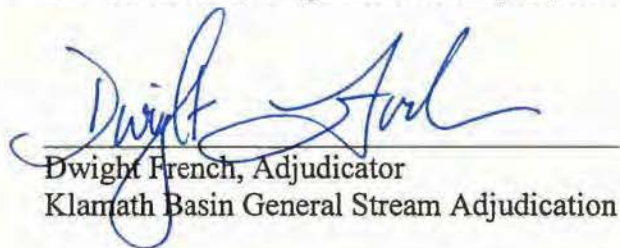
**DATE OF PRIORITY:** TIME IMMEMORIAL

**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° 28' 52" WEST, 1578.7 FEET FROM NE CORNER	0

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication