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Case 279 Partial Order of Determination

Dwight French

Adjudicator, Klamath Basin General Stream Adjudication

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**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)	PARTIAL ORDER OF
THE KLAMATH TRIBES AND THE)	DETERMINATION
UNITED STATES DEPARTMENT OF)	
INTERIOR, BUREAU OF INDIAN)	
AFFAIRS AS TRUSTEE ON BEHALF OF)	Water Right Claims 658 – 667
THE KLAMATH TRIBES)	(Sycan River and its tributaries)
)	

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

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE PROPOSED ORDER**

1. Claims 658 – 667 and that Portion of Claim 612 pertaining to the Sycan River and its tributaries, (Claimants: THE KLAMATH TRIBES; AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA)) and their associated contests¹ were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 279.
2. Claim 612 was filed by the Klamath Tribes. It is a composite claim that incorporates by reference each of the United States Bureau of Indian Affairs’ claims based on the hunting, trapping, fishing, and gathering purposes of the Klamath Treaty of 1864. The portion of Claim 612 pertaining to the Sycan River incorporates by reference BIA Claims 658 – 667.
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 658 – 667, and that

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

Portion of Claim 612 pertaining to the Sycan River and its tributaries on December 1, 2011.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, and (2) the Upper Basin Contestants. Responses to exceptions were timely filed by the United States and the Klamath Tribes.
5. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 658 – 667 and that Portion of Claim 612 pertaining to the Sycan River and its tributaries. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.8, A.9, and A.10, below.
6. For administrative convenience, OWRD has addressed Claim 612 in a separate Partial Order of Determination for Claim 612. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 612 and the United States’ Claims 657 – 667, and the ownership of the water rights that are recognized in these claims.
7. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “Procedural History” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted in its entirety.
 - c. The “Expert Testimony” is adopted in its entirety.
 - d. The “Issues” is adopted is adopted in its entirety.
 - e. The “Findings of Fact” is adopted with modifications, as set forth in Section A.8, below.
 - f. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.9, below.
 - g. The “Opinion” is adopted with modifications, as set forth in Section A.10, below.
 - h. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claims 658 – 663 and 665 – 667. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 and A.10, below, the outcome of the Order has been modified (1) to correct the description of the upper reach boundary for Claim 667, and (2) to recognize rights for Claims 663 and 666 for only those portions of claimed reaches that lie within the former reservation boundary. Claim 664 is denied because it lies entirely outside of the former reservation boundary.
8. **Findings of Fact.** Within the Proposed Order’s “Findings of Fact” section, Findings of Facts 36, 37, 50, 51, and 55 are modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

a. *Modifications to Finding of Fact 36:*

36. Claim 663 identifies the upper and lower reach boundaries’ longitude and latitude coordinates as well as township-range designations. The township-range

description for the upper reach boundary is identified as T 32S, R 14E, S 36, SE $\frac{1}{4}$, NE $\frac{1}{4}$, distance from NE corner S 51° 1' 54" W, 1,544.7 ft. The lower reach boundary is identified as T 33S, R 13E, S 10, NE $\frac{1}{4}$, SW $\frac{1}{4}$, distance from SW corner N 52° 59' 31" E, 2,407.3 ft. (OWRD Ex. 24 at 22.) A portion of Claim 663 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, which is located at the eastern edge of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, T 32S, R 13E, W.M., distance from NE corner S 2° 6' 6" E, 1550 ft.²

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

b. *Modifications to Finding of Fact 37:*

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

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

c. *Modifications to Finding of Fact 50:*

50. Claim 666 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 30S, R 12E, S 34, NW $\frac{1}{4}$, SW $\frac{1}{4}$, distance from SW corner N 19° 43' 30" E, 1,666.2 ft. The lower reach boundary is identified as T 31S, R 12E, S 35, NW $\frac{1}{4}$, SW $\frac{1}{4}$, distance from SW corner N 41° 9' 6" E, 1,997.4 ft. (OWRD Ex. 27 at 19.) A portion of Claim 666 lies outside the former reservation boundary. The upper reach boundary is

² Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27
PARTIAL ORDER OF DETERMINATION
CLAIMS 658-667 (Sycan River and its tributaries)

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

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

d. *Modifications to Finding of Fact 51:*

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

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

e. *Modifications to Finding of Fact 55:*

55. Claim 667 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 31S, R 12E, S 43 12, NW ¼ NW ¼ SW ¼ SW ¼, distance from SW Corner N 88° 26' 10" E, 1097 ft. ~~distance from NW corner S 87° 15' 6" E, 1,072.7 ft.~~ (Stipulation). The lower reach boundary is identified as T 31S, R 13E, S 25, SW¼, SE¼, distance from SE corner N 73° 9' 43" W, 2,271 ft. (OWRD Ex. 128 at 20.)

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

³ Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27
PARTIAL ORDER OF DETERMINATION
CLAIMS 658-667 (Sycan River and its tributaries)

9. **Conclusions of Law.** Within the Proposed Order’s “Conclusions of Law” section, Conclusion of Law 2 is modified as follows (additions are shown in underline text):

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

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

10. **Opinion.** Within the Proposed Order’s “Opinion” section, Section VII (Proposed Order at 38-39) is replaced in its entirety as follows:

Claimants filed claims for instream water rights for three reaches partially or entirely outside the former reservation boundaries. Two of these reaches originate outside those boundaries before flowing onto the reservation. Calahan Creek (Claim 666) and the portion of the Sycan River between Long Creek and Guard Station (Claim 663) each begin outside the former reservation. The portion of the Sycan River between Paradise Creek and Long Creek (Claim 664) begins and terminates outside the eastern boundary of the former reservation. Claimants assert these off-reservation claims are necessary to the preservation of certain treaty species of fish, including redband trout and at least one species of sucker. In addition, Claimants attest that these reaches will provide necessary habitat for anadromous species once successfully introduced to the basin. OWRD and Contestants each contend that Claimants are not entitled to claim water rights outside the boundaries of the former reservation.

A. The Claimants’ claims for off-reservation water rights are not supported by the underlying principles of the federal reserved water right doctrine

As is described in detail below, there is no federal precedent in support of off-reservation federal reserved water rights. Nor is there any basis for expanding the federal reserved water right doctrine to include implied off-reservation federal reserved water rights.

The federal reserved water right doctrine is judge-made law. It determines whether a court should imply that the federal government intended to create a water right when reserving a specific piece of land for a specific purpose, notwithstanding the fact that neither Congress nor the executive branch explicitly created a water right to benefit that land.

Recognizing the origins of the doctrine, the United States Supreme Court has found that federal reserved water right claims require “careful examination,” both “because the reservation [of water] is implied, rather than expressed” and because, “[w]here Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to the state law.” *United States v. New Mexico*, 438 US 696, 701-02 (1978).

Allowing implied off-reservation federal reserved water rights would be at odds with this admonition. Recognition of such rights would give the implied right in water a greater scope than the explicit right in land. A federal reservation of land has an explicitly defined, geographically limited scope. The primary purposes of that reservation of land apply only within the reservation's explicitly defined boundaries. Recognition of implied off-reservation federal reserved water rights would allow the *implied* exercise of federal authority (the reservation of water) to greatly exceed the *explicit* exercise of federal authority, by permitting an implied reservation of water that could greatly exceed the boundaries of the explicit reservation of land.

This is not merely a theoretical concern. An implied reservation of water to benefit a reservation of land for the harvest of anadromous fish – no matter how small the reservation of land or how significant the fishery – could result in implied water rights ranging from the ocean up to the headwaters of all of a river's tributaries. So construed, the judicially created federal reserved water rights doctrine would completely undermine Congress's historical deference to state water law.

The implied creation of a water right potentially far greater in geographic scope than the explicit reservation of land does not square with the *New Mexico* court's directive to treat the federal reserved water right doctrine conservatively. OWRD therefore concludes that it is inappropriate to so dramatically expand the federal reserved water right doctrine.

B. The cases relied on in support of an off-reservation water right are inapplicable

None of the cases cited by the Claimants in support of off-reservation water rights to support on-reservation hunting and fishing rights are applicable. The cited cases are not determinative of the issue at hand. Nor do they provide persuasive support for the Claimants' position. The Claimants cite to *Arizona v. California*, 376 US 340 (1964); *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1033-35 (9th Cir. 1985); *Washington Dep't of Ecology v. Acquavella*, No. 77-2-01484-5, Memorandum Opinion: Treaty Reserved Water Rights at Usual and Accustomed Fishing Places (Wash. Super. Ct. Sept. 1, 1994); and *United States v. Adair*, 723 F.2d 1394 (9th Cir 1983) (*Adair II*) as support for their position. OWRD addresses each of these cases below.

The Claimants characterize *Arizona*, 376 US at 344-45, as having awarded "reserved water rights from the Colorado River for the Cocopah Reservation, even though the river lies approximately two miles outside reservation boundaries." Claimants' Joint Post-Hearing Response Brief at 53 (emphasis in original; internal citations omitted). The Claimants argue that *Arizona* was premised on the Cocopah Reservation being two miles from the Colorado River. On the contrary, the relative locations of the Cocopah Reservation and the Colorado River, and the effect the relative locations might have on an award of water rights, was at not at issue in *Arizona*. The decision does not even mention

the relative locations of the Cocopah Reservation and the river. Under these circumstances, the decision could not have been premised on the Colorado River being off the reservation.

As the Claimants acknowledge, the boundaries of the Cocopah Reservation were in dispute, although not in the *Arizona* proceeding, at the time of the *Arizona* decision. A 1972 Opinion of the Solicitor of the Department of the Interior states: “Over the years there have been considerable differences of opinion regarding interpretation of the Executive Order” that created the Cocopah Reservation. Opinions of the Solicitor, page 2051, December 21, 1972 (“1972 Opinion”) (attached hereto as Exhibit A). Specifically, the dispute pertained to whether the Executive Order intended to include lands bordering the Colorado River within the Reservation. *Id.* The 1972 Opinion reversed an earlier opinion issued by the Solicitor of the Interior, and concluded that the “reservation as created by the Executive Order...extended to the Colorado River.” *Id.* at 2052. Given that the issue of awarding reserved water rights in off-reservation bodies of water was not in dispute in *Arizona*, and that the reservation boundaries were uncertain at the time of the *Arizona* decision,⁴ *Arizona* provides no support for the Claimants’ position.

The Claimants next cite to a ruling issued by a federal district court judge in the state of Washington, which was affirmed by the Ninth Circuit Court of Appeals in *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1033-35 (9th Cir. 1985). The district court judge’s ruling required the Yakima Irrigation Project to maintain a certain quantity of water at a location outside of the primary Yakama Reservation boundaries to support the Yakama Nation’s treaty fishing rights. Civ. No. 21, Instructions to the Watermaster (E.D. Wash. Oct. 31, 1980) (attached as Attachment C4 to the Affidavit of David W. Harder in Support of the United States’ and Klamath Tribes’ Memorandum in Support of Joint Motion for Ruling on Legal Issues Defining the Tribal Water Rights, submitted July 8, 2005) (referred to herein as “Instructions to Watermaster”).

The treaty establishing the Yakama Reservation is different from the Klamath Treaty in a critical respect. Unlike the Klamath Treaty, the Yakama treaty reserved fishing rights for the Yakama Nation at “usual and accustomed [fishing] places” outside the primary boundaries of the Yakama Reservation. *Kittitas*, 763 F.2d at 1033. In other words, the Yakama hold rights to use land for a specific purpose at locations outside the primary reservation boundaries. The district court ruling specifically states that the reach of river protected by the ruling “is a part of a fishery reserved to the Yakama Indian Nation and its members pursuant to its treaty with the United States....” Instructions to the Watermaster at 2. The water rights affirmed by *Kittitas* are therefore based on a specific, underlying fishing

⁴ While the view of the United States Department of Interior Solicitor at the time of the *Arizona* decision was that the Colorado River was not on and did not border the Cocopah Reservation, the 1972 Opinion makes clear that the Solicitor’s view at the time of the *Arizona* decision was not universally shared.

right (a right in land at the “usual and accustomed fishing places”) for which there is no equivalent in the Klamath Treaty.

In addition, the *Kittitas* cases did not involve the adjudication of the Yakima Nation’s federal reserved water rights (or the adjudication of any other water rights). The Ninth Circuit stated specifically that the parties to the proceeding “intended no general adjudication of water rights.” *Kittitas Reclamation Dist. v. Sunnyside Valley Irrigation Dist.*, 763 F2d 1032, 1035 (1985).

Finally, the *Kittitas* cases 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 (9th Cir 1983) (*Adair II*), that describes the process for determining the primary purposes of an Indian reservation, and the canons of Indian treaty interpretation. Reliance on *Adair II* misses the mark. The question posed by the Claimants’ off-reservation water right claim is whether the federal reserved water right doctrine is broad enough to permit implied water rights *under any circumstances* at locations geographically unconnected to (i.e., not either bordering or within) a federal reservation of land. If the doctrine is not so broad (and OWRD concludes that it is not), then the purposes of a particular federal reservation, or the documents creating a particular federal reservation, are immaterial.

The Claimants repeatedly cite to portions of *Adair II* that describe the determination of the *purposes* of the reservation. *See, e.g., Adair II*, 723 F2d at 1408, n13. It is in this context, and this context only, that the *Adair II* court treats Indian reservations differently than other federal reservations of land. As the *Adair II* court explained, determination of the purposes of the reservation is based on an interpretation of the treaty creating the reservation. In this context, canons of Indian treaty construction may apply. But the purpose of the reservation is only one element of a federal reserved water right, and it is an element that speaks to the character of the land actually reserved. It does not address the effects of a reservation on far-flung locales. The *Adair II* court’s discussion of the purpose of a reservation is therefore inapplicable to the question of off-reservation water rights.

In conclusion, the Claimants’ claims for off-reservation water rights are not supported by either the underlying principles of the federal reserved water right doctrine or by the case law. The off-reservation portions of Claims 663 and 666, and the entirety of Claim 664 are therefore denied.

Reasons for Modification: To make the Opinion section consistent with the Department’s legal conclusions, and to describe the legal reasoning behind certain of the Department’s legal conclusions.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “Procedural History” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted in its entirety.
 - c. The “Expert Testimony” is adopted in its entirety.
 - d. The “Issues” is adopted in its entirety.
 - e. The “Findings of Fact” is adopted with modifications, as set forth in Section A.7, above.
 - f. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, above.
 - g. The “Opinion” is adopted with modifications, as set forth in Section A.9, above.
 - h. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claims 658 – 663 and 665 – 667. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 and A.10, above, the outcome of the Order has been modified (1) to correct the description of the upper reach boundary for Claim 667, and (2) to recognize rights for Claims 663 and 666 for only those portions of claimed reaches that lie within the former reservation boundary. Claim 664 is denied because it lies entirely outside of the former reservation boundary.

2. Both the United States and the Klamath Tribes filed claims based on the hunting, trapping, fishing and gathering purposes of the Klamath Treaty of 1864. The Klamath Tribes' Claim 612 incorporates the United States' claims in this case by reference. The Klamath Tribes' claims are duplicative of the United States' claims, not additive. The United States holds the rights recognized herein in trust for the Klamath Tribes. *Colorado River Water Conservation Dist. v. United States*, 424 US 800, 810 (1976). As a result, Claim 612 is denied. Claim 612 is addressed in a separate Partial Order of Determination for Claim 612, and the United States' Claims 658 – 667 are determined in this Partial Order of Determination for Claims 658 – 667.
3. Based on the file and record herein, IT IS ORDERED that Claim 664 is denied and is of no force or effect.
4. Based on the file and record herein, IT IS ORDERED that Claims 658 – 663 and 665 – 667 are approved as set forth in the following Water Right Claim Description.

CLAIM NO. 658

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 658, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

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

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 70823)⁵ TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species existing in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

⁵ References to the Water Availability Basin (WAB) for each claim (658-667) are included solely for OWRD's convenience.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 279-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	156	1130	1670
April	250	1130	1670
May	295	1130	1670
June	101	--	--
July	30	--	--
August	20	--	--
September	23	--	--
October	27	--	--
November	38	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

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

CLAIM NO. 659

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 659, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

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

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420269) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 279-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	103	1050	1540
April	251	1050	1540
May	277	1050	1540
June	87	--	--
July	21	--	--
August	13	--	--
September	15	--	--
October	19	--	--
November	23	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 660

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 660, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

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

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420237) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 279-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	100	732	1550
April	248	732	1550
May	273	732	1550
June	86	--	--
July	21	--	--
August	13	--	--
September	15	--	--
October	19	--	--
November	23	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 661

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 661, PAGE 14, MYLAR MAP FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

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

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420238) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 279-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	84	700	1480
April	230	700	1480
May	259	700	1480
June	78	--	--
July	14	--	--
August	6.7	--	--
September	8.6	--	--
October	12	--	--
November	15	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 662

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 662, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

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

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420239) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

^b Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 279-US-400 at II-8.)

RIPARIAN HABITAT FLOWS^c

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	69	605	1280
April	203	605	1280
May	236	605	1280
June	75	--	--
July	14	--	--
August	6.7	--	--
September	8	--	--
October	11	--	--
November	14	--	--
December	--	--	--

^c Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 663

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 663, PAGES 18-20, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

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

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE
STREAM REACH (OWRD WAB ID# 70821) TO PROTECT THE FOLLOWING FLOWS
THROUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT FLOWS^b

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	36	589	1050
April	100	589	1050
May	127	589	1050
June	35	--	--
July	10	--	--
August	6.2	--	--
September	4.9	--	--
October	5	--	--
November	6.3	--	--
December	--	--	--

^b Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 665

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 665, PAGES 21-24, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: LONG CREEK, tributary to the SYCAN MARSH

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE
STREAM REACH (OWRD WAB ID# 31420215) TO PROTECT THE FOLLOWING FLOWS
THROUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

MONTH	Physical Habitat Flow^a (CFS)
January	14
February	14
March	19
April	19
May	19
June	14
July	14
August	13
September	13
October	13
November	13
December	14

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT FLOWS^b

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	26	136	193
April	44	136	193
May	56	136	193
June	32	--	--
July	12	--	--
August	8.8	--	--
September	9.3	--	--
October	11	--	--
November	12	--	--
December	--	--	--

^b Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 666

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 666, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: CALAHAN CREEK, tributary to LONG CREEK

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH (OWRD WAB ID# 31420241) TO PROTECT THE FOLLOWING FLOWS THOUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT FLOWS^b

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	3.9	37	63
April	7.1	37	63
May	11	37	63
June	2.9	37	63
July	1.7	--	--
August	.87	--	--
September	1.3	--	--
October	1.3	--	--
November	1.6	--	--
December	--	--	--

^b Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)

DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

CLAIM NO. 667

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

CLAIM # 667, PAGES 19-20, MYLAR MAPS FILED OCTOBER 1, 1999

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

SOURCE OF WATER: COYOTE CREEK, tributary to the SYCAN MARSH

PURPOSE or USE:

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

PERIODS OF ALLOWED USE AND RATES:

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE
STREAM REACH (OWRD WAB ID# 3142026) TO PROTECT THE FOLLOWING FLOWS
THROUGHOUT THE REACH:

PHYSICAL HABITAT FLOWS

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

^a Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 279-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

RIPARIAN HABITAT FLOWS^b

MONTH	Riparian Habitat Base Flow (CFS)	Riparian Habitat High (Flood) Flow	
		Trigger Flow (CFS)	Cap Flow (CFS)
January	--	--	--
February	--	--	--
March	2.9	72	105
April	6.3	72	105
May	4.1	72	105
June	2.8	--	--
July	1	--	--
August	0.28	--	--
September	0.6	--	--
October	0.8	--	--
November	1	--	--
December	--	--	--

^b Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 279-US-300 at 53.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 279-US-300 at 81-82.)


DATE OF PRIORITY: TIME IMMEMORIAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication