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Klamath Marsh

State of Oregon  
Water Resources Department OCT 01 1999

Claim #: 623

WATER RESOURCES DEPT.  
SALEM, OREGON

AMENDED STATEMENT AND PROOF OF CLAIM  
TO THE USE OF SURFACE WATERS OF THE KLAMATH RIVER AND ITS TRIBUTARIES  
FEDERAL OR INDIAN RESERVED WATER RIGHT

Claimant: United States, Bureau of Indian Affairs, as Trustee on behalf of the Klamath Tribes

Mailing Address: 911 NE 11th Avenue

Portland

OR

97232

Contact Person: Barbara Scott-Brier, Office of the Solicitor, Pacific Northwest Region, U.S. Dept. of the Interior, 500 N.E. Multnomah Street, Suite 607, Portland, OR. 97232, 503-231-2139 (telefax 503-231-2166).

Service: All notices and service of contests or other matters regarding this water right shall also be made on the United States' Attorney General's representative, David Harder, U.S. Dept. of Justice, 999 18th Street, Suite 945 - North Tower, Denver, CO. 80202 (telefax 303-312-7379).

Name of Federal Reservation: The current Klamath Indian Reservation, the former Klamath Indian Reservation, and areas that are necessary for the protection of and continued and future enjoyment of the Klamath Tribes' treaty protected hunting, fishing and gathering rights.

THE UNITED STATES OF AMERICA CLAIMS A FEDERAL RESERVED WATER RIGHT AS DESCRIBED BELOW

1. Sources of Water: Klamath Marsh and tributaries flowing into the marsh which are required to maintain the specified marsh elevation

Tributary to: N/A

2. Water is claimed for the following uses for the federal reservation:

Minimum monthly water levels to be maintained at Silver Lake Highway gage

Nature of Use	From - To	Water Level (in feet above mean sea level)
Marsh vegetation (primarily yellow pond lily [ <i>Nuphar polysepalum</i> ] and wildlife habitat	January 1-31	4,515.0
	February 1-29	4,515.1
	March 1-31	4,515.2
	April 1-30	4,515.1
	May 1-31	4,514.7
	June 1-30	4,514.2
	July 1-31	4,513.8
	August 1-31	4,513.6
	September 1-30	4,513.7
	October 1-31	4,514.0
	November 1-30	4,514.4
	December 1-31	4,514.7

3. Total amount of water claimed: See Item 2 above.

3.1 Out-of-marsh use(s): No out-of-marsh uses are claimed.

3.2 In-marsh use(s): See Item 2 above.

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4. Priority Date: Time Immemorial
5. Date of creation of the federal reservation: October 14, 1864
6. Basis of right claimed: Indian Reserved Water Right, Aboriginal Water Right, Treaty of October 14, 1864.
7. Purpose(s) of Reservation: For the purposes encompassed by the Treaty of October 14, 1864, between the United States of America and the Klamath and Moadoc Tribes and Yahooskin Band of Snake Indians, 16 Stat. 707.
8. Place of use: Klamath Marsh (bounded within the area defined by the following UTM coordinates-Zone 10)

NW Coordinate:	<u>597340.333</u>	<u>4769930.5251</u>
NE Coordinate:	<u>619211.0815</u>	<u>4770321.3831</u>
SE Coordinate:	<u>619738.9107</u>	<u>4740732.2156</u>
SW Coordinate:	<u>597867.7427</u>	<u>4740343.08</u>

and see attached amended maps.

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9. Point of diversion: No diversion is claimed.
10. County(ies) of place of use: Klamath
11. Other water rights claimed for this federal reservation: The BIA as Trustee on behalf of the Klamath Tribes is claiming water rights in Klamath Marsh and its tributary streams, Klamath Lake and its tributary streams, and the Klamath River and its tributary streams to support the Tribes' fishing, hunting and gathering rights. Other water right claims include, among others, those for domestic, commercial, municipal and industrial uses; religious and cultural uses; and agricultural uses.
12. Remarks: This Amended Claim form changes items 2 and 3 from the original claim. This Amended Claim incorporates Exhibits B-G to the original claim. A new Exhibit A (maps) is enclosed. This is a claim for present use. The species of fish and wildlife to be supported by this claim are provided in the Bureau of Indian Affairs Appendix, Attachment G, and as further described in the Bureau of Indian Affairs' oral and written responses to OWRD questions throughout 1999. A description of the general changes in the Amended Claim is found on ATTACHMENT TO BIA AMENDED CLAIM NO. 623.

THIS FORM IS AN ATTACHMENT TO A LETTER FORWARDING THE CLAIM OF THE UNITED STATES ON BEHALF OF THE U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS. THE SIGNATURE AND AFFIRMATION OF SUCH LETTER CONSTITUTES THE SIGNATURE OF THE AUTHORIZED AGENT REPRESENTING THE UNITED STATES OF AMERICA REQUIRED FOR SUCH CLAIM.

ATTACH THE FOLLOWING EXHIBITS TO THIS CLAIM FORM:

- Map of water use, including point(s) of diversion and place(s) of use: SEE ATTACHED AMENDED MAPS
- Legal description of the reservation: see Bureau of Indian Affairs Appendix, previously submitted
- List of documents creating the reservation: see Bureau of Indian Affairs Appendix, previously submitted
- Description of the legal status of the land prior to creation of the federal reservation: see Bureau of Indian Affairs Appendix, previously submitted
- Development history of the water use (Describe history of water use, including timing of development and chain of title) : see Bureau of Indian Affairs Appendix, previously submitted
- Description of diversion facility: Not Applicable
- Additional supporting documentation: see Bureau of Indian Affairs Appendix, previously submitted

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**ATTACHMENT TO BIA AMENDED CLAIM NO. 623, PARAGRAPH 12:  
EXPLANATION OF AMENDED KLAMATH MARSH CLAIM,  
SEPTEMBER 1999**

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The amended BIA marsh claim reflects adjustments in data used in the original 1997 claim analysis. The marsh claim is based on the difference in hydroperiod between the Nuphar and Scirpus vegetation types being added to the marsh reference conditions (1962-1980 water years). The adjustments in data affected both the reference conditions and the hydroperiods used in determining the marsh claim.

The Silver Lake Highway (SLH) gage used to collect water level data at Klamath Marsh during 1961 to 1980 (hereafter "old SLH gage") was installed on a bridge that was subsequently removed and replaced with a new bridge in 1985. A new gage was installed on the new bridge in 1992 (hereafter "new SLH gage"). The datum of the new SLH gage was found to be 4499.19 feet above mean sea level, but no records of the datum for the old SLH gage were found. The amended claim uses an analysis developed by the U.S. Fish and Wildlife Service (FWS) to make the two-gage data sets comparable. Using the old and new SLH gage data, the FWS developed regression equations of water level at SLH versus discharge at the USGS stream gage below Kirk Reef, which is situated below Klamath Marsh. FWS found that the regression line was 0.19 feet lower for the new gage compared to the old gage. The amended claim analysis adjusted the 1961-1980 (old SLH gage) data to 0.19 feet lower, to make the two sets of gage data comparable. This adjustment reduced by 0.19 feet the mean water levels of Klamath Marsh used to describe reference hydrologic conditions in the marsh over the 1961-1980 period.

The period of the reference data set for current conditions used in calculating the original 1997 claim was also slightly modified for the amended claim. The marsh reference conditions for the original claim included a portion of the 1961 water year (May through September 1961), as well as the 1962-1980 water years (October 1961 to September 1980). The hydroperiods, however, were based on the 1962-1980 water year data. The amended claim uses the 1962-1980 water year data to identify reference conditions, in order to use exactly the same SLH gage data set throughout the analysis. Eliminating 1961 water year data resulted in reference water levels being adjusted slightly upward, between 0.01 and 0.03 feet for the months of May through September. This upward adjustment partially offsets the downward correction in reference conditions due to the corrected datum, with the total downward adjustment in reference conditions for May through September varying from 0.16 to 0.18 feet and that for October through April being 0.19 feet.

The adjustment of the SLH gage data also affected the calculation of hydroperiods for the four different vegetation types evaluated in the marsh analysis. Using the adjusted SLH gage data, the predicted water depths over the 1962-1980 water years at temporary gage locations in Klamath Marsh were recalculated, using regression equations developed between the temporary gages and the SLH location. From these recalculated predicted water depths, mean monthly water depths (+ standard deviations) for all gages within a vegetation type were recalculated. The recalculated depths ranged from 0.26 lower feet for the Nuphar (i.e., wocus) type to 0.22 feet lower for Scirpus type compared to the previous hydroperiod water depths.

In conclusion, the net result of the changes in the 1962-1980 SLH data set is a downward adjustment from 1997 between 0.20 and 0.23 feet. The amended marsh claim levels are adjusted downward to the nearest decimal point, ranging from 0.2 to 0.3 feet lower than the 1997 claims.

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