

**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 500

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 500) 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 Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
2. On August 3, 1999, the USFS timely amended Claim 500 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim increased the natural flow limits from 14.0 cfs to 20.0 cfs for Jan.1 to Jan. 31; 33.0 cfs to 40.0 cfs for Mar. 1 to Mar.31; 33.0 cfs to 74 cfs for April 1 to April 30, May 1 to May 31, and June 1 to June 30; 15.0 cfs to 35.0 cfs for July 1 to July 31, 11.0 cfs to 30.0 cfs for Aug. 1 to Aug. 31, and Sept. 1 to Sept. 30; 13.0 cfs to 20.0 cfs for Oct. 1 to Oct. 31; 12.0 cfs to 20.0 cfs for Nov. 1 to Nov. 30; and 14.0 cfs to 20.0 cfs for Dec 1 to Dec 31. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 169 to the Claim and/or Preliminary Evaluation of Claim 500.
6. On May 1, 2000, Leonard Baio timely filed Contest 404 to the Claim and/or Preliminary Evaluation of Claim 500.
7. On May 2, 2000, Gary Strong timely filed Contest 639 to the Claim and/or Preliminary Evaluation of Claim 500.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 874 to the Claim and/or Preliminary Evaluation of Claim 500.
9. On May 2, 2000, Robert Bartell timely filed Contest 1109 to the Claim and/or Preliminary Evaluation of Claim 500.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1344 to the Claim and/or Preliminary Evaluation of Claim 500.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1578 to the Claim and/or Preliminary Evaluation of Claim 500.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1927 to the Claim and/or Preliminary Evaluation of Claim 500.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2379 to the Claim and/or Preliminary Evaluation of Claim 500.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2616 to the Claim and/or Preliminary Evaluation of Claim 500.
15. On May 8, 2000, John Briggs timely filed Contest 4366 to the Claim and/or Preliminary Evaluation of Claim 500.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4601 to the Claim and/or Preliminary Evaluation of Claim 500.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4834 to the Claim and/or Preliminary Evaluation of Claim 500.

18. On May 8, 2000, Thomas William Mallams timely filed Contest 5077 to the Claim and/or Preliminary Evaluation of Claim 500.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5310 to the Claim and/or Preliminary Evaluation of Claim 500.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5543 to the Claim and/or Preliminary Evaluation of Claim 500.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2929 to the Claim and/or Preliminary Evaluation of Claim 500.
22. 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 002.
23. 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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Roger Nicholson. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2929, the remaining contest to Claim 500. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On March 14, 2003, the Adjudicator withdrew Case 002 from the Office of Administrative Hearings.
26. Except as described in Finding of Fact 29, below, the place of use underlying Claim 500 is within or borders a federal reservation of land that is owned by the Claimant.
27. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS, which are incorporated as if set forth fully herein, the date of reservation is the priority date of a federal reserved water right. This claim has a reservation date of October 28, 1988, and is based on Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
28. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.

29. The place of use for the right recognized by this claim is as follows: NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 15, TOWNSHIP 35 SOUTH, RANGE 16 EAST, W.M., TO NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.; EXCEPTING THE PORTIONS OF THE NORTH FORK SPRAGUE RIVER IN SW¹/₄NW¹/₄, SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, SECTION 20 AND NE¹/₄NW¹/₄, NW¹/₄NW¹/₄, SW¹/₄NW¹/₄, SECTION 33, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. Portions of the claimed reach are excluded, as described above, because they are neither within nor border a federal reservation of land, as is required by the federal reserved water right doctrine.

B. DETERMINATION

1. The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (“Act”) is a valid basis for this claim, including the claimed purpose of use. The Act established the national policy that certain rivers with outstanding values shall be preserved in free-flowing condition, and that they shall be protected for the benefit and enjoyment of present and future generations. 16 USC §§ 1271-1286, 1271. The Act’s purpose is to implement that policy through the creation of a National Wild and Scenic River system. 16 USC § 1272. The Act expressly reserves water for that purpose:

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

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

2. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.
3. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
5. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the

beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.

6. Based on the file and record herein, IT IS ORDERED that Claim 500 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 500

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGES 227, 228, 238 and 239

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

SOURCE OF WATER:

The NORTH FORK SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE: INSTREAM FLOW

RATES:

NATURAL FLOW FROM A TRIGGER FLOW OF 74 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 957 CFS, AND AS SET FORTH IN THE TABLE BELOW:

Period of Use:	When the Natural Flow is Less than 74 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Jan 1 to Jan 31	20.0
Feb 1 to Feb 28/29	20.0
Mar 1 to Mar 30	40.0
Apr 1 to Apr 30	74.0
May 1 to May 31	74.0
June 1 to June 30	74.0
July 1 to July 31	35.0
Aug 1 to Aug 31	30.0
Sept 1 to Sept 30	30.0
Oct 1 to Oct 31	20.0
Nov 1 to Nov 30	20.0
Dec 1 to Dec 31	20.0

INSREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH.

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

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

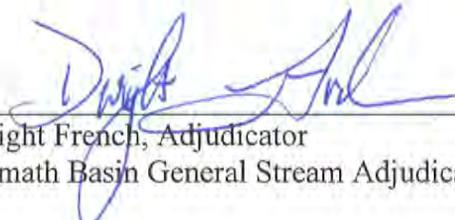
DATE OF PRIORITY: OCTOBER 28, 1988

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 15, TOWNSHIP 35 SOUTH, RANGE 16 EAST, W.M., TO NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.; EXCEPTING THE PORTIONS OF THE NORTH FORK SPRAGUE RIVER IN SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 20 AND NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 33, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 501

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 501) 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 Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
2. On August 3, 1999, the USFS timely amended Claim 501 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim increased the natural flow limits from 11.0 cfs to 17.0 cfs for Jan.1 to Jan. 31, 12.0 cfs to 32.0 cfs for Feb.1 to Feb. 28/29, 7.1 cfs to 7.5 cfs for Sept. 1 to Sept. 30, 5.8 cfs to 7.7 cfs for Oct. 1 to Oct. 31, and 10.0 cfs to 11.0 cfs for Dec 1 to Dec 31. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.

5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 170 to the Claim and/or Preliminary Evaluation of Claim 501.
6. On May 1, 2000, Leonard Baio timely filed Contest 405 to the Claim and/or Preliminary Evaluation of Claim 501.
7. On May 2, 2000, Gary Strong timely filed Contest 640 to the Claim and/or Preliminary Evaluation of Claim 501.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 875 to the Claim and/or Preliminary Evaluation of Claim 501.
9. On May 2, 2000, Robert Bartell timely filed Contest 1110 to the Claim and/or Preliminary Evaluation of Claim 501.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1345 to the Claim and/or Preliminary Evaluation of Claim 501.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1579 to the Claim and/or Preliminary Evaluation of Claim 501.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1928 to the Claim and/or Preliminary Evaluation of Claim 501.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2380 to the Claim and/or Preliminary Evaluation of Claim 501.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2617 to the Claim and/or Preliminary Evaluation of Claim 501.
15. On May 8, 2000, John Briggs timely filed Contest 4367 to the Claim and/or Preliminary Evaluation of Claim 501.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4602 to the Claim and/or Preliminary Evaluation of Claim 501.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4835 to the Claim and/or Preliminary Evaluation of Claim 501.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5078 to the Claim and/or Preliminary Evaluation of Claim 501.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5311 to the Claim and/or Preliminary Evaluation of Claim 501.

20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5544 to the Claim and/or Preliminary Evaluation of Claim 501.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2930 to the Claim and/or Preliminary Evaluation of Claim 501.
22. On May 8, 2000, J. R. Simplot as Trustee of the J. R. Simplot Self-Declaration of Revocable Trust timely filed Contest 2770 to the Claim and/or Preliminary Evaluation of Claim 501.
23. 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 002.
24. On June 5, 2001, J. R. Simplot as Trustee of the J. R. Simplot Self-Declaration of Revocable Trust withdrew without prejudice Contest 2770. *See* J. R. SIMPLOT, TRUSTEE OF THE J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, MOTION TO WITHDRAW FROM CONTESTS RELATED TO CLAIM NOS. 500, 501 AND 502 (June. 5, 2001).
25. 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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Roger Nicholson. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
26. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2930, the remaining contest to Claim 501. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
27. On March 14, 2003, the Adjudicator withdrew Case 002 from the Office of Administrative Hearings.
28. The place of use underlying Claim 500 is within or borders a federal reservation of land that is owned by the Claimant.
29. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS, which are incorporated as if set forth fully herein, the date of reservation is the priority date of a federal reserved water right. This claim has a reservation date of October 28, 1988, and is based on Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*

30. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
31. The place of use for the right recognized by this claim is as follows: SYCAN RIVER FROM NWSE, SECTION 5, TOWNSHIP 34 SOUTH, RANGE 17 EAST, W.M., TO SWSW, SECTION 22, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M.

B. DETERMINATION

1. The Omnibus Oregon Wild and Scenic Rivers Act of 1988 ("Act") is a valid basis for this claim, including the claimed purpose of use. The Act established the national policy that certain rivers with outstanding values shall be preserved in free-flowing condition, and that they shall be protected for the benefit and enjoyment of present and future generations. 16 USC §§ 1271-1286, 1271. The Act's purpose is to implement that policy through the creation of a National Wild and Scenic River system. 16 USC § 1272. The Act expressly reserves water for that purpose:

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

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

2. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.
3. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
5. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.

6. Based on the file and record herein, IT IS ORDERED that Claim 501 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 501

CLAIM MAP REFERENCE:

MYLAR FILED AS CLAIM # 377, PAGES 202, 214, 215, 216, and 228

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

SOURCE OF WATER:

The SYCAN RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM FLOW

RATES:

NATURAL FLOW FROM A TRIGGER FLOW OF 81 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 1921 CFS, AND AS SET FORTH IN THE TABLE BELOW:

Period of Use:	When the Natural Flow is Less than 81 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Jan 1 to Jan 31	17.0
Feb 1 to Feb 28/29	32.0
Mar 1 to Mar 30	54.0
Apr 1 to Apr 30	60.0
May 1 to May 31	60.0
June 1 to June 30	60.0
July 1 to July 31	15.0
Aug 1 to Aug 31	9.4
Sept 1 to Sept 30	7.5
Oct 1 to Oct 31	7.7
Nov 1 to Nov 30	9.5
Dec 1 to Dec 31	11.0

INSTREAM FLOWS TO BE MEASURED AT THE LOWER END OF THE STREAM REACH.

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

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

DATE OF PRIORITY: OCTOBER 28, 1988

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM NWSE, SECTION 5, TOWNSHIP 34 SOUTH, RANGE 17 EAST, W.M., TO SWSW, SECTION 22, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 502

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 502) 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 Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
2. On August 3, 1999, the USFS timely amended Claim 502 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim increased the natural flow limits from 0.0 cfs to 5.8 cfs for Aug.1 to Aug. 31 and Sept. 1 to Sept. 31. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 287 cfs to 281 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 171 to the Claim and/or Preliminary Evaluation of Claim 502.
7. On May 1, 2000, Leonard Baio timely filed Contest 406 to the Claim and/or Preliminary Evaluation of Claim 502.
8. On May 2, 2000, Gary Strong timely filed Contest 641 to the Claim and/or Preliminary Evaluation of Claim 502.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 876 to the Claim and/or Preliminary Evaluation of Claim 502.
10. On May 2, 2000, Robert Bartell timely filed Contest 1111 to the Claim and/or Preliminary Evaluation of Claim 502.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1346 to the Claim and/or Preliminary Evaluation of Claim 502.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1580 to the Claim and/or Preliminary Evaluation of Claim 502.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1929 to the Claim and/or Preliminary Evaluation of Claim 502.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2381 to the Claim and/or Preliminary Evaluation of Claim 502.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2618 to the Claim and/or Preliminary Evaluation of Claim 502.
16. On May 8, 2000, John Briggs timely filed Contest 4368 to the Claim and/or Preliminary Evaluation of Claim 502.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4603 to the Claim and/or Preliminary Evaluation of Claim 502.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4836 to the Claim and/or Preliminary Evaluation of Claim 502.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5079 to the Claim and/or Preliminary Evaluation of Claim 502.

20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5312 to the Claim and/or Preliminary Evaluation of Claim 502.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5545 to the Claim and/or Preliminary Evaluation of Claim 502.
22. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2931 to the Claim and/or Preliminary Evaluation of Claim 502.
23. On May 8, 2000, J. R. Simplot as Trustee of the J. R. Simplot Self-Declaration of Revocable Trust timely filed Contest 2771 to the Claim and/or Preliminary Evaluation of Claim 502.
24. On May 8, 2000, The Nature Conservancy timely filed Contest 2803 to the Claim and/or Preliminary Evaluation of Claim 502.
25. 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 002.
26. On June 5, 2001, J. R. Simplot as Trustee of the J. R. Simplot Self-Declaration of Revocable Trust withdrew without prejudice Contest 2771. *See* J. R. SIMPLOT, TRUSTEE OF THE J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, MOTION TO WITHDRAW FROM CONTESTS RELATED TO CLAIM NOS. 500, 502 AND 502 (June. 5, 2001).
27. On February 11, 2002, The Nature Conservancy's Contest 2803 was dismissed. *See* ORDER TO DISMISS CONTEST NOS. 2803, 2804, 2805, 2806 AND REFERRED TO THE ADJUDICATOR FOR FINAL DISPOSITION (Feb. 11, 2002).
28. 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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Roger Nicholson. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
29. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2931, the remaining contest to Claim 502. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
30. On March 14, 2003, the Adjudicator withdrew Case 002 from the Office of Administrative Hearings.

31. Except as described in Finding of Fact 34, below, the place of use underlying Claim 502 is within or borders a federal reservation of land that is owned by the Claimant.
32. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS, which are incorporated as if set forth fully herein, the date of reservation is the priority date of a federal reserved water right. This claim has a reservation date of October 28, 1988, and is based on Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
33. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
34. The place of use for the right recognized by this claim is as follows: SYCAN RIVER FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 31, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M.; EXCEPTING THE PORTIONS OF SYCAN RIVER IN SECTION 30, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M, AND W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SECTION 1, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M., AND SW $\frac{1}{4}$, SECTION 19, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M. Portions of the claimed reach are excluded, as described above, because they are neither within nor border a federal reservation of land, as is required by the federal reserved water right doctrine.

B. DETERMINATION

1. The Omnibus Oregon Wild and Scenic Rivers Act of 1988 ("Act") is a valid basis for this claim, including the claimed purpose of use. The Act established the national policy that certain rivers with outstanding values shall be preserved in free-flowing condition, and that they shall be protected for the benefit and enjoyment of present and future generations. 16 USC §§ 1271-1286, 1271. The Act's purpose is to implement that policy through the creation of a National Wild and Scenic River system. 16 USC § 1272. The Act expressly reserves water for that purpose:

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

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

2. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.

3. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
5. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
6. Based on the file and record herein, IT IS ORDERED that Claim 502 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 502

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGES 212, 213, 223, and 224

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

SOURCE OF WATER:

The SYCAN RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM FLOW

RATES:

NATURAL FLOW FROM A TRIGGER FLOW OF 281 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 3552 CFS, AND AS SET FORTH IN THE TABLE BELOW:

Period of Use:	When the Natural Flow is Less than 281 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Jan 1 to Jan 31	17.0
Feb 1 to Feb 28/29	33.0
Mar 1 to Mar 30	61.0
Apr 1 to Apr 30	230.0
May 1 to May 31	230.0
June 1 to June 30	70.0
July 1 to July 31	5.8

Period of Use:	When the Natural Flow is Less than 281 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Aug 1 to Aug 31	5.8
Sept 1 to Sept 30	5.8
Oct 1 to Oct 31	6.9
Nov 1 to Nov 30	6.1
Dec 1 to Dec 31	6.6

INSTREAM FLOWS TO BE MEASURED AT THE LOWER END OF THE STREAM REACH.

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

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

DATE OF PRIORITY: OCTOBER 28, 1988

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 31, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M.; EXCEPTING THE PORTIONS OF SYCAN RIVER IN SECTION 30, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M, AND W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SECTION 1, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M., AND SW $\frac{1}{4}$, SECTION 19, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of the)
UNITED STATES DEPARTMENT OF) PARTIAL ORDER OF
AGRICULTURE, FOREST SERVICE) DETERMINATION
)
)
) Water Right Claim 503
_____)

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 503) 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).
2. In a July 1, 1999 letter, OWRD requested clarification of Claim 503, in part, as follows: “According to your claim map, there are three separate reaches of the stream which are claimed, not one continuous reach. If, indeed, there is more than one claimed stream reach, *please provide a separate claim form for each individual stream reach being claimed as provided for in OAR 690-028-0027.*”
3. On August 3, 1999, the USFS timely amended Claim 503 as to rate of discharge of water for the lower and upper thresholds of flow, and place of use. Additionally, in response to OWRD’s request, the USFS divided Claim 503 by submitting a two additional Statements and Proofs of Claim that covered certain portions of the original Claim 503. OWRD labeled these as Claim 718 and Claim 721.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 503 was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 172 to the Claim and/or Preliminary Evaluation of Claim 503.

6. On May 1, 2000, Leonard Baio timely filed Contest 407 to the Claim and/or Preliminary Evaluation of Claim 503.
7. On May 2, 2000, Gary Strong timely filed Contest 642 to the Claim and/or Preliminary Evaluation of Claim 503.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 877 to the Claim and/or Preliminary Evaluation of Claim 503.
9. On May 2, 2000, Robert Bartell timely filed Contest 1112 to the Claim and/or Preliminary Evaluation of Claim 503.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1347 to the Claim and/or Preliminary Evaluation of Claim 503.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1581 to the Claim and/or Preliminary Evaluation of Claim 503.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1930 to the Claim and/or Preliminary Evaluation of Claim 503.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2382 to the Claim and/or Preliminary Evaluation of Claim 503.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2619 to the Claim and/or Preliminary Evaluation of Claim 503.
15. On May 8, 2000, John Briggs timely filed Contest 4369 to the Claim and/or Preliminary Evaluation of Claim 503.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4604 to the Claim and/or Preliminary Evaluation of Claim 503.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4837 to the Claim and/or Preliminary Evaluation of Claim 503.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5080 to the Claim and/or Preliminary Evaluation of Claim 503.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5313 to the Claim and/or Preliminary Evaluation of Claim 503.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5546 to the Claim and/or Preliminary Evaluation of Claim 503.

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 010.
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 April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
24. The place of use underlying Claim 503 is within or borders a federal reservation of land that is owned by the Claimant.
25. 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 has a reservation date of October 14, 1935 and is based on Presidential Proclamation No. 2143, October 14, 1935.
26. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 503 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 503

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 247

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

SOURCE OF WATER:

BROWNSWORTH CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 15 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 370 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

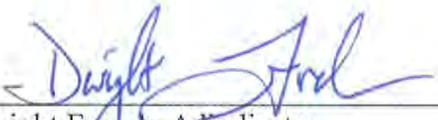
DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

BROWNSWORTH CREEK FROM NESW, SECTION 36, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M., TO NESW, SECTION 36, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 504

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 504) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. In a July 1, 1999 letter, OWRD requested clarification of Claim 504, in part, as follows: “According to your claim map, there are three separate reaches of the stream which are claimed, not one continuous reach. If, indeed, there is more than one claimed stream reach, *please provide a separate claim form for each individual stream reach being claimed as provided for in OAR 690-028-0027.*”
3. On August 3, 1999, the USFS timely amended Claim 504 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.” Additionally, in response to OWRD’s request, the USFS divided Claim 504 by submitting a two additional Statements and Proofs of Claim that covered certain portions of the original Claim 504. OWRD labeled these as Claim 719 and Claim 722.

4. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 6.0 cfs to 6.3 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 504 was approved as amended on August 3, 1999.
6. On May 5, 2000, the Claimant, USFS, timely filed Contest 2184 to the Preliminary Evaluation of Claim 504.
7. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 173 to the Claim and/or Preliminary Evaluation of Claim 504.
8. On May 1, 2000, Leonard Baio timely filed Contest 408 to the Claim and/or Preliminary Evaluation of Claim 504.
9. On May 2, 2000, Gary Strong timely filed Contest 643 to the Claim and/or Preliminary Evaluation of Claim 504.
10. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 878 to the Claim and/or Preliminary Evaluation of Claim 504.
11. On May 2, 2000, Robert Bartell timely filed Contest 1113 to the Claim and/or Preliminary Evaluation of Claim 504.
12. On May 2, 2000, Margaret Jacobs timely filed Contest 1348 to the Claim and/or Preliminary Evaluation of Claim 504.
13. On May 2, 2000, Carolyn Obenchain timely filed Contest 1582 to the Claim and/or Preliminary Evaluation of Claim 504.
14. On May 4, 2000, Rodney Z. James timely filed Contest 1931 to the Claim and/or Preliminary Evaluation of Claim 504.
15. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2383 to the Claim and/or Preliminary Evaluation of Claim 504.
16. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2620 to the Claim and/or Preliminary Evaluation of Claim 504.

17. On May 8, 2000, John Briggs timely filed Contest 4370 to the Claim and/or Preliminary Evaluation of Claim 504.
18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4605 to the Claim and/or Preliminary Evaluation of Claim 504.
19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4838 to the Claim and/or Preliminary Evaluation of Claim 504.
20. On May 8, 2000, Thomas William Mallams timely filed Contest 5081 to the Claim and/or Preliminary Evaluation of Claim 504.
21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5314 to the Claim and/or Preliminary Evaluation of Claim 504.
22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5547 to the Claim and/or Preliminary Evaluation of Claim 504.
23. 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 009.
24. 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).
25. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2184) to Claim 504.
26. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 3 and 4, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 3 and 4, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 504 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 504

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 247

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

SOURCE OF WATER:

BROWNSWORTH CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	36.0
June 1 to June 30	16.0
July 1 to July 31	6.1
Aug 1 to Aug 31	4.4
Sept 1 to Sept 30	4.6
Oct 1 to Oct 31	5.2

DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

BROWNSWORTH CREEK FROM NESW, SECTION 36, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M., TO NESW, SECTION 36, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 505

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

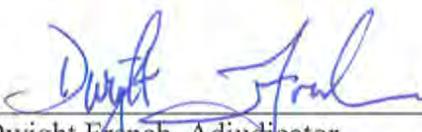
A. FINDINGS OF FACT

1. On April 29, 1997, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS) timely submitted a Statement and Proof of Claim (Claim 505) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 505 and/or Preliminary Evaluation of Claim 505.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 505 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 505 by the USFS, IT IS ORDERED that Claim 505 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 506

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 506) 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).
2. On August 3, 1999, the USFS timely amended Claim 506 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 175 to the Claim and/or Preliminary Evaluation of Claim 506.
5. On May 1, 2000, Leonard Baio timely filed Contest 410 to the Claim and/or Preliminary Evaluation of Claim 506.
6. On May 2, 2000, Gary Strong timely filed Contest 645 to the Claim and/or Preliminary Evaluation of Claim 506.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 880 to the Claim and/or Preliminary Evaluation of Claim 506.

8. On May 2, 2000, Robert Bartell timely filed Contest 1115 to the Claim and/or Preliminary Evaluation of Claim 506.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1350 to the Claim and/or Preliminary Evaluation of Claim 506.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1584 to the Claim and/or Preliminary Evaluation of Claim 506.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1933 to the Claim and/or Preliminary Evaluation of Claim 506.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2385 to the Claim and/or Preliminary Evaluation of Claim 506.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2622 to the Claim and/or Preliminary Evaluation of Claim 506.
14. On May 8, 2000, John Briggs timely filed Contest 4372 to the Claim and/or Preliminary Evaluation of Claim 506.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4607 to the Claim and/or Preliminary Evaluation of Claim 506.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4840 to the Claim and/or Preliminary Evaluation of Claim 506.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5083 to the Claim and/or Preliminary Evaluation of Claim 506.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5316 to the Claim and/or Preliminary Evaluation of Claim 506.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5549 to the Claim and/or Preliminary Evaluation of Claim 506.
20. 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 010.
21. 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. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL*'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).

22. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
23. The place of use underlying Claim 506 is within or borders a federal reservation of land that is owned by the Claimant.
24. 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 has a reservation date of April 15, 1961, and is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961),
25. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 506 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 506

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 195

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

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

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 6.6 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 190 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: APRIL 15, 1961

THE PLACE OF USE IS LOCATED AS FOLLOWS:

COYOTE CREEK FROM NWNW, SECTION 21, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M., TO SWNE, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 507

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 507) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 507 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 3.8 cfs to 4.2 cfs for June 1 to June 30, 1.4 cfs to 1.5 cfs for July 1 to July 31, 0.3 cfs to 0.9 cfs for Sept. 1 to Sept. 30, 0.0 cfs to 1.2 cfs for Oct. 1 to Oct. 31, and 0.8 cfs to 1.5 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2186 to the Preliminary Evaluation of Claim 507.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 176 to the Claim and/or Preliminary Evaluation of Claim 507.
7. On May 1, 2000, Leonard Baio timely filed Contest 411 to the Claim and/or Preliminary Evaluation of Claim 507.
8. On May 2, 2000, Gary Strong timely filed Contest 646 to the Claim and/or Preliminary Evaluation of Claim 507.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 881 to the Claim and/or Preliminary Evaluation of Claim 507.
10. On May 2, 2000, Robert Bartell timely filed Contest 1116 to the Claim and/or Preliminary Evaluation of Claim 507.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1351 to the Claim and/or Preliminary Evaluation of Claim 507.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1585 to the Claim and/or Preliminary Evaluation of Claim 507.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1934 to the Claim and/or Preliminary Evaluation of Claim 507.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2386 to the Claim and/or Preliminary Evaluation of Claim 507.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2623 to the Claim and/or Preliminary Evaluation of Claim 507.
16. On May 8, 2000, John Briggs timely filed Contest 4373 to the Claim and/or Preliminary Evaluation of Claim 507.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4608 to the Claim and/or Preliminary Evaluation of Claim 507.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4841 to the Claim and/or Preliminary Evaluation of Claim 507.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5084 to the Claim and/or Preliminary Evaluation of Claim 507.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5317 to the Claim and/or Preliminary Evaluation of Claim 507.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5550 to the Claim and/or Preliminary Evaluation of Claim 507.
22. 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 009.
23. 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).
24. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2186) to Claim 507.
25. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water rights a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 507 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 507

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 195

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

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

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	5.8
June 1 to June 30	4.2
July 1 to July 31	1.5
Aug 1 to Aug 31	0.4
Sept 1 to Sept 30	0.9
Oct 1 to Oct 31	1.2

DATE OF PRIORITY: APRIL 15, 1961

THE PLACE OF USE IS LOCATED AS FOLLOWS:

COYOTE CREEK FROM NWNW, SECTION 21, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M., TO SWNE, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 508

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 508) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 508 and/or Preliminary Evaluation of Claim 508.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 508 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 508 by the USFS, IT IS ORDERED that Claim 508 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 509

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 509) 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).
2. On August 3, 1999, the USFS timely amended Claim 509 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 8.2 cfs to 5.5 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 178 to the Claim and/or Preliminary Evaluation of Claim 509.

6. On May 1, 2000, Leonard Baio timely filed Contest 413 to the Claim and/or Preliminary Evaluation of Claim 509.
7. On May 2, 2000, Gary Strong timely filed Contest 648 to the Claim and/or Preliminary Evaluation of Claim 509.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 883 to the Claim and/or Preliminary Evaluation of Claim 509.
9. On May 2, 2000, Robert Bartell timely filed Contest 1118 to the Claim and/or Preliminary Evaluation of Claim 509.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1353 to the Claim and/or Preliminary Evaluation of Claim 509.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1587 to the Claim and/or Preliminary Evaluation of Claim 509.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1936 to the Claim and/or Preliminary Evaluation of Claim 509.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2388 to the Claim and/or Preliminary Evaluation of Claim 509.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2625 to the Claim and/or Preliminary Evaluation of Claim 509.
15. On May 8, 2000, John Briggs timely filed Contest 4375 to the Claim and/or Preliminary Evaluation of Claim 509.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4610 to the Claim and/or Preliminary Evaluation of Claim 509.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4843 to the Claim and/or Preliminary Evaluation of Claim 509.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5086 to the Claim and/or Preliminary Evaluation of Claim 509.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5319 to the Claim and/or Preliminary Evaluation of Claim 509.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5552 to the Claim and/or Preliminary Evaluation of Claim 509.

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 010.
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 April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
24. The place of use underlying Claim 509 is within or borders a federal reservation of land that is owned by the Claimant.
25. 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 has a reservation date of August 21, 1906, and is based on a Presidential Proclamation of August 21, 1906.
26. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the

beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.

5. Based on the file and record herein, IT IS ORDERED that Claim 509 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 509

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 247

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

SOURCE OF WATER: DEMING CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 5.5 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 182 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

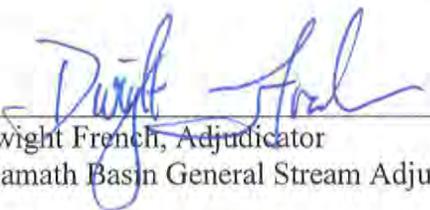
DATE OF PRIORITY: AUGUST 21, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DEMING CREEK FROM NWN, SECTION 1, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M., TO SESE, SECTION 9, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 510

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 510) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 510 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 2.9 cfs to 3.5 cfs for July 1 to July 31, and 1.6 cfs to 2.0 cfs for Sept. 1 to Sept. 30. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.

5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2188 to the Preliminary Evaluation of Claim 510.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 179 to the Claim and/or Preliminary Evaluation of Claim 510.
7. On May 1, 2000, Leonard Baio timely filed Contest 414 to the Claim and/or Preliminary Evaluation of Claim 510.
8. On May 2, 2000, Gary Strong timely filed Contest 649 to the Claim and/or Preliminary Evaluation of Claim 510.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 884 to the Claim and/or Preliminary Evaluation of Claim 510.
10. On May 2, 2000, Robert Bartell timely filed Contest 1119 to the Claim and/or Preliminary Evaluation of Claim 510.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1354 to the Claim and/or Preliminary Evaluation of Claim 510.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1588 to the Claim and/or Preliminary Evaluation of Claim 510.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1937 to the Claim and/or Preliminary Evaluation of Claim 510.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2389 to the Claim and/or Preliminary Evaluation of Claim 510.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2626 to the Claim and/or Preliminary Evaluation of Claim 510.
16. On May 8, 2000, John Briggs timely filed Contest 4376 to the Claim and/or Preliminary Evaluation of Claim 510.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4611 to the Claim and/or Preliminary Evaluation of Claim 510.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4844 to the Claim and/or Preliminary Evaluation of Claim 510.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5087 to the Claim and/or Preliminary Evaluation of Claim 510.

20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5320 to the Claim and/or Preliminary Evaluation of Claim 510.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5553 to the Claim and/or Preliminary Evaluation of Claim 510.
22. 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 009.
23. 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).
24. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2188) to Claim 510.
25. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 510 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 510

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 247

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

SOURCE OF WATER: DEMING CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	17.0
June 1 to June 30	12.0
July 1 to July 31	3.5
Aug 1 to Aug 31	1.8
Sept 1 to Sept 30	2.0
Oct 1 to Oct 31	2.1

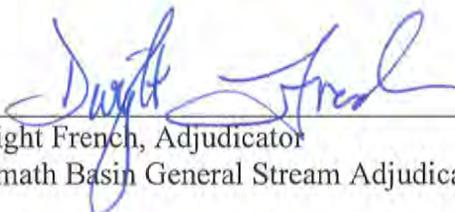
DATE OF PRIORITY: AUGUST 21, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DEMING CREEK FROM NWNE, SECTION 1, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M., TO SESE, SECTION 9, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 511

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

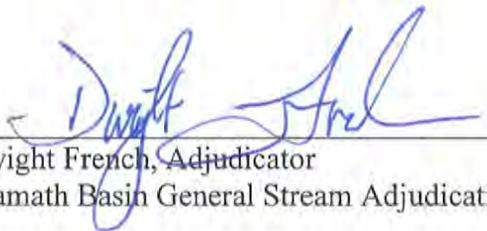
A. FINDINGS OF FACT

1. On April 29, 1997, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS) timely submitted a Statement and Proof of Claim (Claim 511) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 511 and/or Preliminary Evaluation of Claim 511.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 511 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 511 by the USFS, IT IS ORDERED that Claim 511 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 512

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 512) 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).
2. On August 3, 1999, the USFS timely amended Claim 512 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 110 cfs to 99 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 181 to the Claim and/or Preliminary Evaluation of Claim 512.

6. On May 1, 2000, Leonard Baio timely filed Contest 416 to the Claim and/or Preliminary Evaluation of Claim 512.
7. On May 2, 2000, Gary Strong timely filed Contest 651 to the Claim and/or Preliminary Evaluation of Claim 512.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 886 to the Claim and/or Preliminary Evaluation of Claim 512.
9. On May 2, 2000, Robert Bartell timely filed Contest 1121 to the Claim and/or Preliminary Evaluation of Claim 512.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1356 to the Claim and/or Preliminary Evaluation of Claim 512.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1590 to the Claim and/or Preliminary Evaluation of Claim 512.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1939 to the Claim and/or Preliminary Evaluation of Claim 512.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2391 to the Claim and/or Preliminary Evaluation of Claim 512.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2628 to the Claim and/or Preliminary Evaluation of Claim 512.
15. On May 8, 2000, John Briggs timely filed Contest 4378 to the Claim and/or Preliminary Evaluation of Claim 512.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4613 to the Claim and/or Preliminary Evaluation of Claim 512.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4846 to the Claim and/or Preliminary Evaluation of Claim 512.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5089 to the Claim and/or Preliminary Evaluation of Claim 512.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5322 to the Claim and/or Preliminary Evaluation of Claim 512.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5555 to the Claim and/or Preliminary Evaluation of Claim 512.

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 010.
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 31, 2002, the USFS amended the priority date of Claim 512 "from October 14, 1935 as originally claimed to March 1, 1985."
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 512 is within or borders a federal reservation of land that is owned by the Claimant.
26. 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 unless the claimant amended the priority date to a later date. This claim has a reservation date of October 14, 1935, and is based on Presidential Proclamation No. 2143, October 14, 1935.
27. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENTS OF CLAIMS is incorporated as if set forth fully herein.

4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. Based on the file and record herein, IT IS ORDERED that Claim 512 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. 512

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 255 and PAGE 261

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

SOURCE OF WATER: FISHHOLE CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 99 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 446 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: MARCH 1, 1985

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FISHHOLE CREEK FROM NESW, SECTION 4, TOWNSHIP 38 SOUTH, RANGE 15 EAST, W.M., TO SENW, SECTION 32, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 513

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 513) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 513 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 3.5 cfs to 8.3 cfs for June 1 to June 30, 1.6 cfs to 3.7 cfs for July 1 to July 31, 1.1 cfs to 1.3 cfs for Aug. 1 to Aug. 31, 0.7 cfs to 1.2 cfs for Sept. 1 to Sept. 30, 1.0 cfs to 2.2 cfs for Oct. 1 to Oct. 31, and 1.0 cfs to 2.1 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2190 to the Preliminary Evaluation of Claim 513.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 182 to the Claim and/or Preliminary Evaluation of Claim 513.
7. On May 1, 2000, Leonard Baio timely filed Contest 417 to the Claim and/or Preliminary Evaluation of Claim 513.
8. On May 2, 2000, Gary Strong timely filed Contest 652 to the Claim and/or Preliminary Evaluation of Claim 513.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 887 to the Claim and/or Preliminary Evaluation of Claim 513.
10. On May 2, 2000, Robert Bartell timely filed Contest 1122 to the Claim and/or Preliminary Evaluation of Claim 513.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1357 to the Claim and/or Preliminary Evaluation of Claim 513.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1591 to the Claim and/or Preliminary Evaluation of Claim 513.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1940 to the Claim and/or Preliminary Evaluation of Claim 513.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2392 to the Claim and/or Preliminary Evaluation of Claim 513.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2629 to the Claim and/or Preliminary Evaluation of Claim 513.
16. On May 8, 2000, John Briggs timely filed Contest 4379 to the Claim and/or Preliminary Evaluation of Claim 513.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4614 to the Claim and/or Preliminary Evaluation of Claim 513.

18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4847 to the Claim and/or Preliminary Evaluation of Claim 513.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5090 to the Claim and/or Preliminary Evaluation of Claim 513.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5323 to the Claim and/or Preliminary Evaluation of Claim 513.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5556 to the Claim and/or Preliminary Evaluation of Claim 513.
22. 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 009.
23. 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).
24. On December 31, 2002, the USFS amended the priority date of Claim 513 "from October 14, 1935 as originally claimed to March 1, 1985."
25. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2190) to Claim 513.
26. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with the exception that the priority date is changed to March 1, 1985 as set forth in the USFS's amended claim dated December 31, 2002.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 513 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 513

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 255 and PAGE 261

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

SOURCE OF WATER: FISHHOLE CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	16.0
June 1 to June 30	8.3
July 1 to July 31	3.7
Aug 1 to Aug 31	1.3
Sept 1 to Sept 30	1.2
Oct 1 to Oct 31	2.2

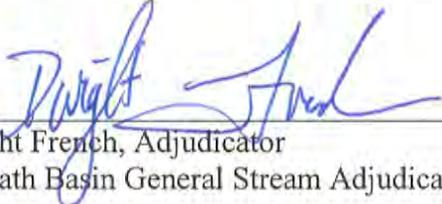
DATE OF PRIORITY: MARCH 1, 1985

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FISHHOLE CREEK FROM NESW, SECTION 4, TOWNSHIP 38 SOUTH, RANGE 15 EAST, W.M., TO SENW, SECTION 32, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 514

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

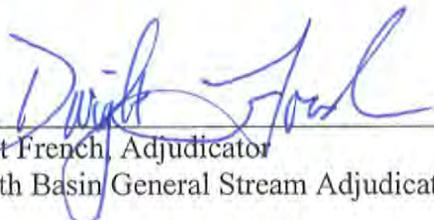
A. FINDINGS OF FACT

1. On April 29, 1997, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS) timely submitted a Statement and Proof of Claim (Claim 514) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 514 and/or Preliminary Evaluation of Claim 514.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 514 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 514 by the USFS, IT IS ORDERED that Claim 514 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 515

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 515) 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).
2. On August 3, 1999, the USFS timely amended Claim 515 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 184 to the Claim and/or Preliminary Evaluation of Claim 515.
5. On May 1, 2000, Leonard Baio timely filed Contest 419 to the Claim and/or Preliminary Evaluation of Claim 515.
6. On May 2, 2000, Gary Strong timely filed Contest 654 to the Claim and/or Preliminary Evaluation of Claim 515.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 889 to the Claim and/or Preliminary Evaluation of Claim 515.

8. On May 2, 2000, Robert Bartell timely filed Contest 1124 to the Claim and/or Preliminary Evaluation of Claim 515.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1359 to the Claim and/or Preliminary Evaluation of Claim 515.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1593 to the Claim and/or Preliminary Evaluation of Claim 515.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1942 to the Claim and/or Preliminary Evaluation of Claim 515.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2394 to the Claim and/or Preliminary Evaluation of Claim 515.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2631 to the Claim and/or Preliminary Evaluation of Claim 515.
14. On May 8, 2000, John Briggs timely filed Contest 4381 to the Claim and/or Preliminary Evaluation of Claim 515.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4616 to the Claim and/or Preliminary Evaluation of Claim 515.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4849 to the Claim and/or Preliminary Evaluation of Claim 515.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5092 to the Claim and/or Preliminary Evaluation of Claim 515.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5325 to the Claim and/or Preliminary Evaluation of Claim 515.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5558 to the Claim and/or Preliminary Evaluation of Claim 515.
20. 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 010.
21. 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).

22. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
23. The place of use underlying Claim 515 is within or borders a federal reservation of land that is owned by the Claimant.
24. 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. The Claimant stated that this claim has a reservation date of April 15, 1961, and is based on the "Proclamation Taking Title to Certain Lands . . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961). OWRD finds that in addition to the reservation date of April 15, 1961, that the portion of Claim 515 located in the NORTH ½ and the NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M has a reservation date of July 26, 1961, and is based on Presidential Proclamation No. 3423, July 26, 1961, 26 Fed. Reg. 6799 (1961).
25. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 515 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 515

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 236

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

SOURCE OF WATER: FIVEMILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 62 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 338 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATES OF PRIORITY:

APRIL 15, 1961 – FIVEMILE CREEK FROM NENW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SOUTH BOUNDARY OF SESW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.; AND

FIVEMILE CREEK FROM NORTH BOUNDARY OF SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

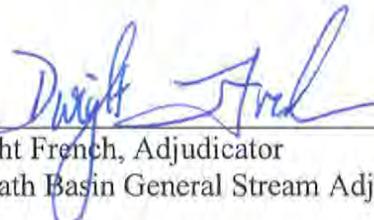
JULY 26, 1961 – FIVEMILE CREEK FROM NORTH BOUNDARY OF NENW, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SOUTH BOUNDARY OF NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FIVEMILE CREEK FROM NENW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 516

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 516) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 516 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 20.0 cfs to 21.0 cfs for June 1 to June 30, 18.0 cfs to 20.0 cfs for July 1 to July 31, 18.0 cfs to 19.0 cfs for Sept. 1 to Sept. 30, 20.0 cfs to 21.0 cfs for Oct. 1 to Oct. 31, and 18.0 cfs to 20.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2192 to the Preliminary Evaluation of Claim 516.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 185 to the Claim and/or Preliminary Evaluation of Claim 516.
7. On May 1, 2000, Leonard Baio timely filed Contest 420 to the Claim and/or Preliminary Evaluation of Claim 516.
8. On May 2, 2000, Gary Strong timely filed Contest 655 to the Claim and/or Preliminary Evaluation of Claim 516.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 890 to the Claim and/or Preliminary Evaluation of Claim 516.
10. On May 2, 2000, Robert Bartell timely filed Contest 1125 to the Claim and/or Preliminary Evaluation of Claim 516.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1360 to the Claim and/or Preliminary Evaluation of Claim 516.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1594 to the Claim and/or Preliminary Evaluation of Claim 516.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1943 to the Claim and/or Preliminary Evaluation of Claim 516.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2395 to the Claim and/or Preliminary Evaluation of Claim 516.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2632 to the Claim and/or Preliminary Evaluation of Claim 516.
16. On May 8, 2000, John Briggs timely filed Contest 4382 to the Claim and/or Preliminary Evaluation of Claim 516.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4617 to the Claim and/or Preliminary Evaluation of Claim 516.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4850 to the Claim and/or Preliminary Evaluation of Claim 516.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5093 to the Claim and/or Preliminary Evaluation of Claim 516.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5326 to the Claim and/or Preliminary Evaluation of Claim 516.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5559 to the Claim and/or Preliminary Evaluation of Claim 516.
22. 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 009.
23. 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).
24. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2192) to Claim 516.
25. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
26. The Settlement Agreement executed between OWRD and USFS incorporated the priority date identified in the Preliminary Evaluation, being April 15, 1961, which is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961). OWRD finds that the portion of Claim 516 located in the NORTH ½ and the NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M has a reservation date of July 26, 1961; these lands are not listed in the" Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961) but are listed on Presidential Proclamation No. 3423, July 26, 1961, 26 Fed. Reg. 6799 (1961).

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with the exception that the portion of Claim 516 located from the north boundary of the NENW, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., to the south boundary of the NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M. has a priority date of July 26, 1961 as described in Finding 26, above.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 516 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 516

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 236

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

SOURCE OF WATER: FIVEMILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

PURPOSE OR USE:
INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER
FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	24.0
June 1 to June 30	21.0
July 1 to July 31	20.0
Aug 1 to Aug 31	18.0
Sept 1 to Sept 30	19.0
Oct 1 to Oct 31	21.0

DATES OF PRIORITY:

APRIL 15, 1961 – FIVEMILE CREEK FROM NENW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SOUTH BOUNDARY OF SESW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.; AND

FIVEMILE CREEK FROM NORTH BOUNDARY OF SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

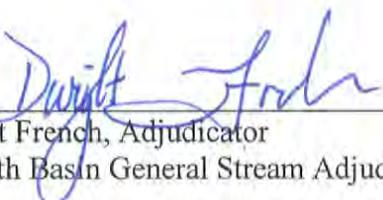
JULY 26, 1961 – FIVEMILE CREEK FROM NORTH BOUNDARY OF NENW, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SOUTH BOUNDARY OF NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FIVEMILE CREEK FROM NENW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 517

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 517) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 517 and/or Preliminary Evaluation of Claim 517.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 517 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 517 by the USFS, IT IS ORDERED that Claim 517 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

A handwritten signature in blue ink, appearing to read "Dwight French", is written over a horizontal line.

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 518

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 518) 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).
2. On August 3, 1999, the USFS timely amended Claim 518 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 187 to the Claim and/or Preliminary Evaluation of Claim 518.
5. On May 1, 2000, Leonard Baio timely filed Contest 422 to the Claim and/or Preliminary Evaluation of Claim 518.
6. On May 2, 2000, Gary Strong timely filed Contest 657 to the Claim and/or Preliminary Evaluation of Claim 518.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 892 to the Claim and/or Preliminary Evaluation of Claim 518.

8. On May 2, 2000, Robert Bartell timely filed Contest 1127 to the Claim and/or Preliminary Evaluation of Claim 518.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1362 to the Claim and/or Preliminary Evaluation of Claim 518.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1596 to the Claim and/or Preliminary Evaluation of Claim 518.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1945 to the Claim and/or Preliminary Evaluation of Claim 518.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2397 to the Claim and/or Preliminary Evaluation of Claim 518.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2634 to the Claim and/or Preliminary Evaluation of Claim 518.
14. On May 8, 2000, John Briggs timely filed Contest 4384 to the Claim and/or Preliminary Evaluation of Claim 518.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4619 to the Claim and/or Preliminary Evaluation of Claim 518.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4852 to the Claim and/or Preliminary Evaluation of Claim 518.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5095 to the Claim and/or Preliminary Evaluation of Claim 518.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5328 to the Claim and/or Preliminary Evaluation of Claim 518.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5561 to the Claim and/or Preliminary Evaluation of Claim 518.
20. 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 010.
21. 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).

22. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
23. The place of use underlying Claim 518 is within or borders a federal reservation of land that is owned by the Claimant.
24. 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 has a reservation date of September 17, 1906 and is based on the Presidential Proclamation of September 17, 1906.
25. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
26. Identical copies of a separate map titled "Land Status for Long Creek Instream Flow Reaches" ("Land Status Map") can be found within both Claims 518 and 521 (*see* Claim 518, Page 97-542-0026, and Claim 521, Page 97-545-0026). This Land Status Map shows an "Upper Reach" and a "Lower Reach." According to this map the "Upper Reach" ends where the "Lower Reach" begins. Claim 518 (Page 97-542-0006) states the "Upper Reach" ends in SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, WM., and has a reservation date of September 17, 1906. Claim 521 (Page 97-545-0006) states the "Lower Reach" begins in SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, WM., and has a reservation date of April 15, 1961. Contrarily, the Land Status Map shows the "Lower Reach" beginning in Section 32 slightly north of Section 5. The Land Status Map is consistent with the USFS Mylar claim map submitted to OWRD on October 14, 1999 (Claim Map Reference – Mylar filed as Claim #377, Page 188). However, Section 32 is not included in the April 15, 1961 Proclamation Taking Title to Certain Lands, but is included in the Presidential Proclamation of September 17, 1906. Therefore, OWRD finds the instream reach for Claim 518 ends at the south boundary line of SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, WM and the instream reach for Claim 521 begins at the north boundary line of NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, WM.

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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 518 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 518

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 188

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

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

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 25 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 333 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

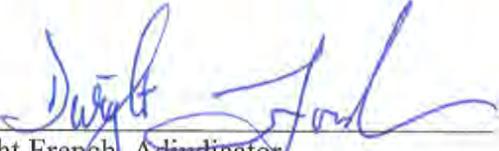
DATE OF PRIORITY: SEPTEMBER 17, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LONG CREEK FROM SWSW, SECTION 28, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M., TO SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 519

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 519) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 519 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 33.0 cfs to 39.0 cfs for June 1 to June 30, 12.0 cfs to 15.0 cfs for July 1 to July 31, 9.4 cfs to 11.0 cfs for Aug. 1 to Aug. 31, 7.2 cfs to 9.3 cfs for Oct. 1 to Oct. 31, and 6.8 cfs to 8.1 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2194 to the Preliminary Evaluation of Claim 519.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 188 to the Claim and/or Preliminary Evaluation of Claim 519.
7. On May 1, 2000, Leonard Baio timely filed Contest 423 to the Claim and/or Preliminary Evaluation of Claim 519.
8. On May 2, 2000, Gary Strong timely filed Contest 658 to the Claim and/or Preliminary Evaluation of Claim 519.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 893 to the Claim and/or Preliminary Evaluation of Claim 519.
10. On May 2, 2000, Robert Bartell timely filed Contest 1128 to the Claim and/or Preliminary Evaluation of Claim 519.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1363 to the Claim and/or Preliminary Evaluation of Claim 519.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1597 to the Claim and/or Preliminary Evaluation of Claim 519.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1946 to the Claim and/or Preliminary Evaluation of Claim 519.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2398 to the Claim and/or Preliminary Evaluation of Claim 519.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2635 to the Claim and/or Preliminary Evaluation of Claim 519.
16. On May 8, 2000, John Briggs timely filed Contest 4385 to the Claim and/or Preliminary Evaluation of Claim 519.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4620 to the Claim and/or Preliminary Evaluation of Claim 519.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4853 to the Claim and/or Preliminary Evaluation of Claim 519.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5096 to the Claim and/or Preliminary Evaluation of Claim 519.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5329 to the Claim and/or Preliminary Evaluation of Claim 519.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5562 to the Claim and/or Preliminary Evaluation of Claim 519.
22. 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 009.
23. 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). *See also* NOTICE OF ERRATA (July 18, 2002).
24. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2194) to Claim 519.
25. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
26. Identical copies of a separate map titled "Land Status for Long Creek Instream Flow Reaches" ("Land Status Map") can be found within both Claims 519 and 522 (*see* Claim 519, Page 97-543-0023, and Claim 522, Page 97-546-0023). This Land Status Map shows an "Upper Reach" and a "Lower Reach." According to this map the "Upper Reach" ends where the "Lower Reach" begins. Claim 519 (Page 97-543-0006) states the "Upper Reach" ends in SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M., and has a reservation date of September 17, 1906. Claim 522 (Page 97-546-0006) states the "Lower Reach" begins in SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., and has a reservation date of April 15, 1961. Contrarily, the Land Status Map shows the "Lower Reach" beginning in Section 32 slightly north of Section 5. The Land Status Map is consistent with the USFS Mylar claim map submitted to OWRD on October 14, 1999 (Claim Map Reference – Mylar filed as Claim #377, Page 188). However, Section 32 is not included in the April 15, 1961 Proclamation Taking Title to Certain Lands, but is included in the Presidential Proclamation of September 17, 1906. Therefore, OWRD

finds the instream reach for Claim 519 ends at the south boundary line of SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M. and the instream reach for Claim 522 begins at the north boundary line of NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., which is consistent with the Preliminary Evaluation and the Settlement Agreement.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 519 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 519

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 188

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

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

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	30.0
June 1 to June 30	39.0
July 1 to July 31	15.0
Aug 1 to Aug 31	11.0
Sept 1 to Sept 30	8.5
Oct 1 to Oct 31	9.3

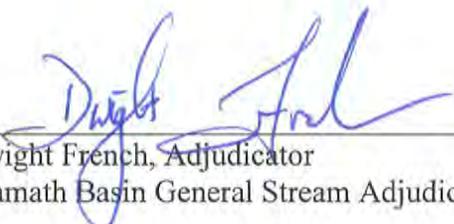
DATE OF PRIORITY: SEPTEMBER 17, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LONG CREEK FROM SWSW, SECTION 28, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M., TO SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 520

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 520) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 520 and/or Preliminary Evaluation of Claim 520.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 520 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 520 by the USFS, IT IS ORDERED that Claim 520 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 521

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 521) 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).
2. On August 3, 1999, the USFS timely amended Claim 521 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 190 to the Claim and/or Preliminary Evaluation of Claim 521.
5. On May 1, 2000, Leonard Baio timely filed Contest 425 to the Claim and/or Preliminary Evaluation of Claim 521.
6. On May 2, 2000, Gary Strong timely filed Contest 660 to the Claim and/or Preliminary Evaluation of Claim 521.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 895 to the Claim and/or Preliminary Evaluation of Claim 521.

8. On May 2, 2000, Robert Bartell timely filed Contest 1130 to the Claim and/or Preliminary Evaluation of Claim 521.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1365 to the Claim and/or Preliminary Evaluation of Claim 521.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1599 to the Claim and/or Preliminary Evaluation of Claim 521.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1948 to the Claim and/or Preliminary Evaluation of Claim 521.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2400 to the Claim and/or Preliminary Evaluation of Claim 521.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2637 to the Claim and/or Preliminary Evaluation of Claim 521.
14. On May 8, 2000, John Briggs timely filed Contest 4387 to the Claim and/or Preliminary Evaluation of Claim 521.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4622 to the Claim and/or Preliminary Evaluation of Claim 521.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4855 to the Claim and/or Preliminary Evaluation of Claim 521.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5098 to the Claim and/or Preliminary Evaluation of Claim 521.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5331 to the Claim and/or Preliminary Evaluation of Claim 521.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5564 to the Claim and/or Preliminary Evaluation of Claim 521.
20. 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 010.
21. 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).

22. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
23. The place of use underlying Claim 521 is within or borders a federal reservation of land that is owned by the Claimant.
24. 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 has a reservation date of April 15, 1961 and is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961).
25. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
26. Identical copies of a separate map titled "Land Status for Long Creek Instream Flow Reaches" ("Land Status Map") can be found within both Claims 518 and 521 (*see* Claim 518, Page 97-542-0026, and Claim 521, Page 97-545-0026). This Land Status Map shows an "Upper Reach" and a "Lower Reach." According to this map the "Upper Reach" ends where the "Lower Reach" begins. Claim 518 (Page 97-542-0006) states the "Upper Reach" ends in SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, WM., and has a reservation date of September 17, 1906. Claim 521 (Page 97-545-0006) states the "Lower Reach" begins in SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, WM., and has a reservation date of April 15, 1961. Contrarily, the Land Status Map shows the "Lower Reach" beginning in Section 32 slightly north of Section 5. The Land Status Map is consistent with the USFS Mylar claim map submitted to OWRD on October 14, 1999 (Claim Map Reference – Mylar filed as Claim #377, Page 188). However, Section 32 is not included in the April 15, 1961 Proclamation Taking Title to Certain Lands, but is included in the Presidential Proclamation of September 17, 1906. Therefore, OWRD finds the instream reach for Claim 518 ends at the south boundary line of SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, WM and the instream reach for Claim 521 begins at the north boundary line of NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, WM.

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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 521 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 521

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 194

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

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

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 25 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 333 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

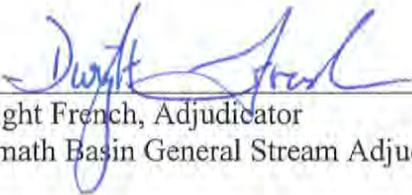
DATE OF PRIORITY: April 15, 1961

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LONG CREEK FROM NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., TO SWSE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 522

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 522) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 522 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 33.0 cfs to 39.0 cfs for June 1 to June 30, 12.0 cfs to 15.0 cfs for July 1 to July 31, 9.4 cfs to 11.0 cfs for Aug. 1 to Aug. 31, 7.2 cfs to 9.3 cfs for Oct. 1 to Oct. 31, and 6.8 cfs to 8.1 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2196 to the Preliminary Evaluation of Claim 522.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 191 to the Claim and/or Preliminary Evaluation of Claim 522.
7. On May 1, 2000, Leonard Baio timely filed Contest 426 to the Claim and/or Preliminary Evaluation of Claim 522.
8. On May 2, 2000, Gary Strong timely filed Contest 661 to the Claim and/or Preliminary Evaluation of Claim 522.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 896 to the Claim and/or Preliminary Evaluation of Claim 522.
10. On May 2, 2000, Robert Bartell timely filed Contest 1131 to the Claim and/or Preliminary Evaluation of Claim 522.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1366 to the Claim and/or Preliminary Evaluation of Claim 522.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1600 to the Claim and/or Preliminary Evaluation of Claim 522.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1949 to the Claim and/or Preliminary Evaluation of Claim 522.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2401 to the Claim and/or Preliminary Evaluation of Claim 522.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2638 to the Claim and/or Preliminary Evaluation of Claim 522.
16. On May 8, 2000, John Briggs timely filed Contest 4388 to the Claim and/or Preliminary Evaluation of Claim 522.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4623 to the Claim and/or Preliminary Evaluation of Claim 522.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4856 to the Claim and/or Preliminary Evaluation of Claim 522.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5099 to the Claim and/or Preliminary Evaluation of Claim 522.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5332 to the Claim and/or Preliminary Evaluation of Claim 522.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5565 to the Claim and/or Preliminary Evaluation of Claim 522.
22. 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 009.
23. 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).
24. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2196) to Claim 522.
25. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
26. Identical copies of a separate map titled "Land Status for Long Creek Instream Flow Reaches" ("Land Status Map") can be found within both Claims 519 and 522 (*see* Claim 519, Page 97-543-0023, and Claim 522, Page 97-546-0023). This Land Status Map shows an "Upper Reach" and a "Lower Reach." According to this map the "Upper Reach" ends where the "Lower Reach" begins. Claim 519 (Page 97-543-0006) states the "Upper Reach" ends in SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M., and has a reservation date of September 17, 1906. Claim 522 (Page 97-546-0006) states the "Lower Reach" begins in SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., and has a reservation date of April 15, 1961. Contrarily, the Land Status Map shows the "Lower Reach" beginning in Section 32 slightly north of Section 5. The Land Status Map is consistent with the USFS Mylar claim map submitted to OWRD on October 14, 1999 (Claim Map Reference – Mylar filed as Claim #377, Page 188). However, Section 32 is not included in the April 15, 1961 Proclamation Taking Title to Certain Lands, but is included in the Presidential Proclamation of September 17, 1906. Therefore, OWRD

finds the instream reach for Claim 519 ends at the south boundary line of SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M. and the instream reach for Claim 522 begins at the north boundary line of NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., which is consistent with the Preliminary Evaluation and the Settlement Agreement.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 522 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 522

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 194

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

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

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	30.0
June 1 to June 30	39.0
July 1 to July 31	15.0
Aug 1 to Aug 31	11.0
Sept 1 to Sept 30	8.5
Oct 1 to Oct 31	9.3

DATE OF PRIORITY: April 15, 1961

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LONG CREEK FROM NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., TO SWSE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 523

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 523) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 523 and/or Preliminary Evaluation of Claim 523.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 523 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 523 by the USFS, IT IS ORDERED that Claim 523 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013.



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 524

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 524) 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).
2. On August 3, 1999, the USFS timely amended Claim 524 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 193 to the Claim and/or Preliminary Evaluation of Claim 524.
5. On May 1, 2000, Leonard Baio timely filed Contest 428 to the Claim and/or Preliminary Evaluation of Claim 524.
6. On May 2, 2000, Gary Strong timely filed Contest 663 to the Claim and/or Preliminary Evaluation of Claim 524.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 898 to the Claim and/or Preliminary Evaluation of Claim 524.

8. On May 2, 2000, Robert Bartell timely filed Contest 1133 to the Claim and/or Preliminary Evaluation of Claim 524.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1368 to the Claim and/or Preliminary Evaluation of Claim 524.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1602 to the Claim and/or Preliminary Evaluation of Claim 524.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1951 to the Claim and/or Preliminary Evaluation of Claim 524.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2403 to the Claim and/or Preliminary Evaluation of Claim 524.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2640 to the Claim and/or Preliminary Evaluation of Claim 524.
14. On May 8, 2000, John Briggs timely filed Contest 4390 to the Claim and/or Preliminary Evaluation of Claim 524.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4625 to the Claim and/or Preliminary Evaluation of Claim 524.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4858 to the Claim and/or Preliminary Evaluation of Claim 524.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5101 to the Claim and/or Preliminary Evaluation of Claim 524.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5334 to the Claim and/or Preliminary Evaluation of Claim 524.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5567 to the Claim and/or Preliminary Evaluation of Claim 524.
20. 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 010.
21. 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).

22. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
23. The place of use underlying Claim 524 is within or borders a federal reservation of land that is owned by the Claimant.
24. 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 has a reservation date of October 14, 1935 and is based on Presidential Proclamation No. 2143, October 14, 1935.
25. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 524 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 524

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 238

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

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 115 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 1624 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

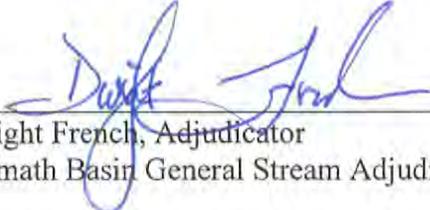
DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SESW, SECTION 30, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., TO SWSW, SECTION 30, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 525

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 525) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 525 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 51.0 cfs to 57.0 cfs for July 1 to July 31, 45.0 cfs to 47.0 cfs for Aug. 1 to Aug. 31, 44.0 cfs to 49.0 cfs for Sept. 1 to Sept. 30, 48.0 cfs to 54.0 cfs for Oct. 1 to Oct. 31, and 45.0 cfs to 72.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2198 to the Preliminary Evaluation of Claim 525.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 194 to the Claim and/or Preliminary Evaluation of Claim 525.
7. On May 1, 2000, Leonard Baio timely filed Contest 429 to the Claim and/or Preliminary Evaluation of Claim 525.
8. On May 2, 2000, Gary Strong timely filed Contest 664 to the Claim and/or Preliminary Evaluation of Claim 525.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 899 to the Claim and/or Preliminary Evaluation of Claim 525.
10. On May 2, 2000, Robert Bartell timely filed Contest 1134 to the Claim and/or Preliminary Evaluation of Claim 525.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1369 to the Claim and/or Preliminary Evaluation of Claim 525.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1603 to the Claim and/or Preliminary Evaluation of Claim 525.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1952 to the Claim and/or Preliminary Evaluation of Claim 525.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2404 to the Claim and/or Preliminary Evaluation of Claim 525.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2641 to the Claim and/or Preliminary Evaluation of Claim 525.
16. On May 8, 2000, John Briggs timely filed Contest 4391 to the Claim and/or Preliminary Evaluation of Claim 525.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4626 to the Claim and/or Preliminary Evaluation of Claim 525.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4859 to the Claim and/or Preliminary Evaluation of Claim 525.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5102 to the Claim and/or Preliminary Evaluation of Claim 525.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5335 to the Claim and/or Preliminary Evaluation of Claim 525.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5568 to the Claim and/or Preliminary Evaluation of Claim 525.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2939 to the Claim and/or Preliminary Evaluation of Claim 525.
23. 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 009.
24. 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).
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2939. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2198) to Claim 525.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 525 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 525

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 238

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

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	246.0
June 1 to June 30	127.0
July 1 to July 31	57.0
Aug 1 to Aug 31	47.0
Sept 1 to Sept 30	49.0
Oct 1 to Oct 31	54.0

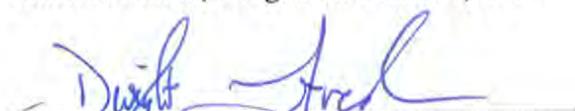
DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SESW, SECTION 30, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., TO SWSW, SECTION 30, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 526

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

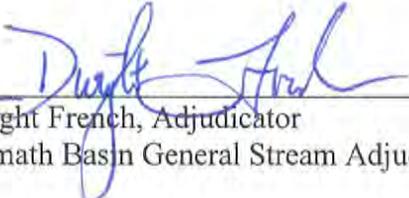
A. FINDINGS OF FACT

1. On April 29, 1997, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS) timely submitted a Statement and Proof of Claim (Claim 526) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 526 and/or Preliminary Evaluation of Claim 526.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 526 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 526 by the USFS, IT IS ORDERED that Claim 526 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 527

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 527) 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).
2. On August 3, 1999, the USFS timely amended Claim 527 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 196 to the Claim and/or Preliminary Evaluation of Claim 527.
5. On May 1, 2000, Leonard Baio timely filed Contest 431 to the Claim and/or Preliminary Evaluation of Claim 527.
6. On May 2, 2000, Gary Strong timely filed Contest 666 to the Claim and/or Preliminary Evaluation of Claim 527.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 901 to the Claim and/or Preliminary Evaluation of Claim 527.
8. On May 2, 2000, Robert Bartell timely filed Contest 1136 to the Claim and/or Preliminary Evaluation of Claim 527.

9. On May 2, 2000, Margaret Jacobs timely filed Contest 1371 to the Claim and/or Preliminary Evaluation of Claim 527.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1605 to the Claim and/or Preliminary Evaluation of Claim 527.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1954 to the Claim and/or Preliminary Evaluation of Claim 527.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2406 to the Claim and/or Preliminary Evaluation of Claim 527.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2643 to the Claim and/or Preliminary Evaluation of Claim 527.
14. On May 8, 2000, John Briggs timely filed Contest 4393 to the Claim and/or Preliminary Evaluation of Claim 527.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4628 to the Claim and/or Preliminary Evaluation of Claim 527.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4861 to the Claim and/or Preliminary Evaluation of Claim 527.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5104 to the Claim and/or Preliminary Evaluation of Claim 527.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5337 to the Claim and/or Preliminary Evaluation of Claim 527.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5570 to the Claim and/or Preliminary Evaluation of Claim 527.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2941 to the Claim and/or Preliminary Evaluation of Claim 527.
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 010.
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 February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2941, the remaining contest to Claim 527. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 527 is within or borders a federal reservation of land that is owned by the Claimant.
26. 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 has a reservation date of October 14, 1935 and is based on Presidential Proclamation No. 2143, October 14, 1935.
27. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
28. The beginning and end of the Instream Flow Reach for Claim 527, and the end of the Instream Flow Reach for Claim 529 are not shown on the USFS Mylar map that was submitted on October 14, 1999 (CLAIM MAP REFERENCE: OWRD # CLAIM 377, PAGE 238). Identical copies of a separate map titled "Land Status for North Fork of the Sprague River at Sandhill Crossing Instream Flow Claim" ("Land Status Map") can be found within both Claims 527 and 529 (*see* Claim 527, Page 97-551-0026, and Claim 529, Page 97-553-0026). This Land Status Map shows a "Lower Reach" and an "Upper Reach" as follows:
 - a. The "Lower Reach" is from NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. to NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of October 14, 1935.
 - b. The "Upper Reach" is from SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. to SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of August 21, 1906.

It is apparent from the particulars of Claim 527, in which Item 8 describes the "Lower Reach," and Item 5 shows a reservation date based on October 14, 1935 (Page 97-551-0006), and from the particulars of Claim 529, in which Item 8 describes the "Upper Reach" and Item 5 shows a reservation date based on August 21, 1906 (*see* Page 97-553-0006), that the Instream Flow Reach for Claim 527 begins at the east boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. and ends at the west boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. The Instream Flow Reach for Claim 529 ends at the west boundary line of the SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 527 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 527

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 238

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

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 74 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 957 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

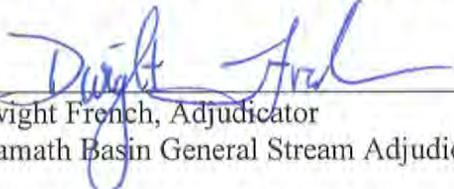
DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., TO NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 528

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 528) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 528 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 69.0 cfs to 82.0 cfs for June 1 to June 30, 15.0 cfs to 35.0 cfs for July 1 to July 31, 11.0 cfs to 29.0 cfs for Aug. 1 to Aug. 31, 11.0 cfs to 30.0 cfs for Sept. 1 to Sept. 30, 13.0 cfs to 33.0 cfs for Oct. 1 to Oct. 31, and 12.0 cfs to 40.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2200 to the Preliminary Evaluation of Claim 528.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 197 to the Claim and/or Preliminary Evaluation of Claim 528.
7. On May 1, 2000, Leonard Baio timely filed Contest 432 to the Claim and/or Preliminary Evaluation of Claim 528.
8. On May 2, 2000, Gary Strong timely filed Contest 667 to the Claim and/or Preliminary Evaluation of Claim 528.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 902 to the Claim and/or Preliminary Evaluation of Claim 528.
10. On May 2, 2000, Robert Bartell timely filed Contest 1137 to the Claim and/or Preliminary Evaluation of Claim 528.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1372 to the Claim and/or Preliminary Evaluation of Claim 528.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1606 to the Claim and/or Preliminary Evaluation of Claim 528.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1955 to the Claim and/or Preliminary Evaluation of Claim 528.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2407 to the Claim and/or Preliminary Evaluation of Claim 528.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2644 to the Claim and/or Preliminary Evaluation of Claim 528.
16. On May 8, 2000, John Briggs timely filed Contest 4394 to the Claim and/or Preliminary Evaluation of Claim 528.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4629 to the Claim and/or Preliminary Evaluation of Claim 528.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4862 to the Claim and/or Preliminary Evaluation of Claim 528.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5105 to the Claim and/or Preliminary Evaluation of Claim 528.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5338 to the Claim and/or Preliminary Evaluation of Claim 528.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5571 to the Claim and/or Preliminary Evaluation of Claim 528.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2942 to the Claim and/or Preliminary Evaluation of Claim 528.
23. 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 009.
24. 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).*
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2942. *See WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).*
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2200) to Claim 528.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
28. The beginning and end of the Instream Flow Reach for Claim 528, and the end of the Instream Flow Reach for Claim 530 are not shown on the USFS Mylar map that was submitted on October 14, 1999 (CLAIM MAP REFERENCE: OWRD # CLAIM 377, PAGE 238). Identical copies of a map titled "Land Status for North Fork of the Sprague River at Sandhill Crossing Instream Flow Claim" ("Land Status Map") can be found within both Claims 528 and 530 (*see* Claim 528, Page 97-552-0023, and Claim 530, Page 97-554-0023). This Land Status Map shows a "Lower Reach" and an "Upper Reach" as follows:

- a. The “Lower Reach” is from NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. to NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of October 14, 1935.
- b. The” Upper Reach” is from SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. to SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of August 21, 1906.

It is apparent from the particulars of Claim 528, in which Item 8 describes the “Lower Reach,” and Item 5 shows a reservation date based on October 14, 1935 (Page 97-552-0006), and from the particulars of Claim 530, in which Item 8 describes the “Upper Reach” and Item 5 shows a reservation date based on August 21, 1906 (*see* Page 97-554-0006), that the Instream Flow Reach for Claim 528 begins at the east boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. and ends at the west boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. The Instream Flow Reach for Claim 530 ends at the west boundary line of the SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant’s claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 528 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 528

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 238

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

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	181.0
June 1 to June 30	82.0
July 1 to July 31	35.0
Aug 1 to Aug 31	29.0
Sept 1 to Sept 30	30.0
Oct 1 to Oct 31	33.0

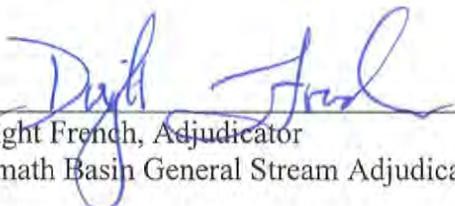
DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., TO NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 529

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 529) 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).
2. On August 3, 1999, the USFS timely amended Claim 529 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 198 to the Claim and/or Preliminary Evaluation of Claim 529.
5. On May 1, 2000, Leonard Baio timely filed Contest 433 to the Claim and/or Preliminary Evaluation of Claim 529.
6. On May 2, 2000, Gary Strong timely filed Contest 668 to the Claim and/or Preliminary Evaluation of Claim 529.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 903 to the Claim and/or Preliminary Evaluation of Claim 529.

8. On May 2, 2000, Robert Bartell timely filed Contest 1138 to the Claim and/or Preliminary Evaluation of Claim 529.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1373 to the Claim and/or Preliminary Evaluation of Claim 529.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1607 to the Claim and/or Preliminary Evaluation of Claim 529.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1956 to the Claim and/or Preliminary Evaluation of Claim 529.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2408 to the Claim and/or Preliminary Evaluation of Claim 529.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2645 to the Claim and/or Preliminary Evaluation of Claim 529.
14. On May 8, 2000, John Briggs timely filed Contest 4395 to the Claim and/or Preliminary Evaluation of Claim 529.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4630 to the Claim and/or Preliminary Evaluation of Claim 529.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4863 to the Claim and/or Preliminary Evaluation of Claim 529.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5106 to the Claim and/or Preliminary Evaluation of Claim 529.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5339 to the Claim and/or Preliminary Evaluation of Claim 529.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5572 to the Claim and/or Preliminary Evaluation of Claim 529.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2943 to the Claim and/or Preliminary Evaluation of Claim 529.
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 010.
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 February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2943, the remaining contest to Claim 529. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 529 is within or borders a federal reservation of land that is owned by the Claimant.
26. 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 has a reservation date of August 21, 1906, and is based on a Presidential Proclamation of August 21, 1906.
27. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
28. The beginning and end of the Instream Flow Reach for Claim 527, and the end of the Instream Flow Reach for Claim 529 are not shown on the USFS Mylar map that was submitted on October 14, 1999 (CLAIM MAP REFERENCE: OWRD # CLAIM 377, PAGE 238). Identical copies of a separate map titled "Land Status for North Fork of the Sprague River at Sandhill Crossing Instream Flow Claim" ("Land Status Map") can be found within both Claims 527 and 529 (*see* Claim 527, Page 97-551-0026, and Claim 529, Page 97-553-0026). This Land Status Map shows a "Lower Reach" and an "Upper Reach" as follows:
 - a. The "Lower Reach" is from NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. to NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of October 14, 1935.
 - b. The "Upper Reach" is from SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. to SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of August 21, 1906.

It is apparent from the particulars of Claim 527, in which Item 8 describes the "Lower Reach," and Item 5 shows a reservation date based on October 14, 1935 (Page 97-551-0006), and from the particulars of Claim 529, in which Item 8 describes the "Upper Reach" and Item 5 shows a reservation date based on August 21, 1906 (*see* Page 97-553-0006), that the Instream Flow Reach for Claim 527 begins at the east boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. and ends at the west boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. The Instream Flow Reach for Claim 529 ends at the west boundary line of the SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 529 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 529

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 228 and PAGE 238

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

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 74 CUBIC FEET PER SECOND (CFS) TO A CAP FLOWS OF 957 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: AUGUST 21, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M., TO SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 530

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 530) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 530 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 69.0 cfs to 82.0 cfs for June 1 to June 30, 15.0 cfs to 35.0 cfs for July 1 to July 31, 11.0 cfs to 29.0 cfs for Aug. 1 to Aug. 31, 11.0 cfs to 30.0 cfs for Sept. 1 to Sept. 30, 13.0 cfs to 33.0 cfs for Oct. 1 to Oct. 31, and 12.0 cfs to 40.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2201 to the Preliminary Evaluation of Claim 530.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 199 to the Claim and/or Preliminary Evaluation of Claim 530.
7. On May 1, 2000, Leonard Baio timely filed Contest 434 to the Claim and/or Preliminary Evaluation of Claim 530.
8. On May 2, 2000, Gary Strong timely filed Contest 669 to the Claim and/or Preliminary Evaluation of Claim 530.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 904 to the Claim and/or Preliminary Evaluation of Claim 530.
10. On May 2, 2000, Robert Bartell timely filed Contest 1139 to the Claim and/or Preliminary Evaluation of Claim 530.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1374 to the Claim and/or Preliminary Evaluation of Claim 530.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1608 to the Claim and/or Preliminary Evaluation of Claim 530.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1957 to the Claim and/or Preliminary Evaluation of Claim 530.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2409 to the Claim and/or Preliminary Evaluation of Claim 530.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2646 to the Claim and/or Preliminary Evaluation of Claim 530.
16. On May 8, 2000, John Briggs timely filed Contest 4396 to the Claim and/or Preliminary Evaluation of Claim 530.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4631 to the Claim and/or Preliminary Evaluation of Claim 530.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4864 to the Claim and/or Preliminary Evaluation of Claim 530.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5107 to the Claim and/or Preliminary Evaluation of Claim 530.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5340 to the Claim and/or Preliminary Evaluation of Claim 530.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5573 to the Claim and/or Preliminary Evaluation of Claim 530.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2944 to the Claim and/or Preliminary Evaluation of Claim 530.
23. 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 009.
24. 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).
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2944. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2201) to Claim 530.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
28. The beginning and end of the Instream Flow Reach for Claim 528, and the end of the Instream Flow Reach for Claim 530 are not shown on the USFS Mylar map that was submitted on October 14, 1999 (CLAIM MAP REFERENCE: OWRD # CLAIM 377, PAGE 238). Identical copies of a map titled "Land Status for North Fork of the Sprague River at Sandhill Crossing Instream Flow Claim" ("Land Status Map") can be found within both Claims 528 and 530 (*see* Claim 528, Page 97-552-0023, and Claim 530, Page 97-554-0023). This Land Status Map shows a "Lower Reach" and an "Upper Reach" as follows:

- a. The “Lower Reach” is from NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. to NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of October 14, 1935.
- b. The” Upper Reach” is from SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. to SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of August 21, 1906.

It is apparent from the particulars of Claim 528, in which Item 8 describes the “Lower Reach,” and Item 5 shows a reservation date based on October 14, 1935 (Page 97-552-0006), and from the particulars of Claim 530, in which Item 8 describes the “Upper Reach” and Item 5 shows a reservation date based on August 21, 1906 (*see* Page 97-554-0006), that the Instream Flow Reach for Claim 528 begins at the east boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. and ends at the west boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. The Instream Flow Reach for Claim 530 ends at the west boundary line of the SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant’s claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 530 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 530

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 228 and PAGE 238

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

SOURCE OF WATER: NORTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	181.0
June 1 to June 30	82.0
July 1 to July 31	35.0
Aug 1 to Aug 31	29.0
Sept 1 to Sept 30	30.0
Oct 1 to Oct 31	33.0

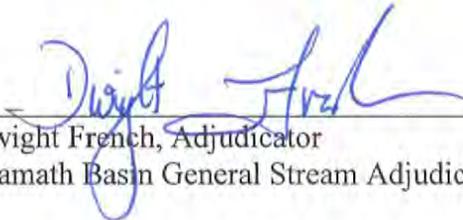
DATE OF PRIORITY: AUGUST 21, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M., TO SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 531

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 531) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 531 and/or Preliminary Evaluation of Claim 531.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 531 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 531 by the USFS, IT IS ORDERED that Claim 531 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 532

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 532) 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).
2. On August 3, 1999, the USFS timely amended Claim 532 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 55 cfs to 53 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 201 to the Claim and/or Preliminary Evaluation of Claim 532.
6. On May 1, 2000, Leonard Baio timely filed Contest 436 to the Claim and/or Preliminary Evaluation of Claim 532.

7. On May 2, 2000, Gary Strong timely filed Contest 671 to the Claim and/or Preliminary Evaluation of Claim 532.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 906 to the Claim and/or Preliminary Evaluation of Claim 532.
9. On May 2, 2000, Robert Bartell timely filed Contest 1141 to the Claim and/or Preliminary Evaluation of Claim 532.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 4478 to the Claim and/or Preliminary Evaluation of Claim 532.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1610 to the Claim and/or Preliminary Evaluation of Claim 532.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1959 to the Claim and/or Preliminary Evaluation of Claim 532.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2411 to the Claim and/or Preliminary Evaluation of Claim 532.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2648 to the Claim and/or Preliminary Evaluation of Claim 532.
15. On May 8, 2000, John Briggs timely filed Contest 4398 to the Claim and/or Preliminary Evaluation of Claim 532.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4633 to the Claim and/or Preliminary Evaluation of Claim 532.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4866 to the Claim and/or Preliminary Evaluation of Claim 532.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5109 to the Claim and/or Preliminary Evaluation of Claim 532.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5342 to the Claim and/or Preliminary Evaluation of Claim 532.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5575 to the Claim and/or Preliminary Evaluation of Claim 532.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2946 to the Claim and/or Preliminary Evaluation of Claim 532.

22. 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 010.
23. 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).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2946, the remaining contest to Claim 532. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 532 is within or borders a federal reservation of land that is owned by the Claimant.
27. 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 unless the claimant amended the priority date to a later date. This claim contains two reservation dates as follows: (1) the reservation date of August 21, 1906 is based on a Presidential Proclamation of August 21, 1906, and (2) the reservation date of September 17, 1906 is based on the Presidential Proclamation of September 17, 1906.
28. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
29. The USFS's Claim 532 states that lower end of the instream reach of Paradise Creek is located in the SWNE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.; however, the USFS claim map (OWRD Reference # Claim 377, Page 215) shows that lower end of the reach of this claim is where Paradise Creek flows into the Sycan River, and is located in the NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. Therefore, OWRD finds that the end of the instream reach for this claim is PARADISE CREEK, NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.

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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The end of the instream reach for this claim is PARADISE CREEK, NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
5. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
6. Based on the file and record herein, IT IS ORDERED that Claim 532 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 532

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 215 and PAGE 227

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

SOURCE OF WATER: PARADISE CREEK, tributary to the SYCAN RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 53 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 630 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 17, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PARADISE CREEK FROM SENW, SECTION 11, TOWNSHIP 34 SOUTH, RANGE 15 EAST, W.M., TO NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 533
_____)	

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 533) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 533 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 3.5 cfs to 3.6 cfs for July 1 to July 31, 1.7 cfs to 1.8 cfs for Aug. 1 to Aug. 31, 1.3 cfs to 1.4 cfs for Sept. 1 to Sept. 30, 0.5 cfs to 1.9 cfs for Oct. 1 to Oct. 31, and 1.0 cfs to 2.3 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2203 to the Preliminary Evaluation of Claim 533.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 202 to the Claim and/or Preliminary Evaluation of Claim 533.
7. On May 1, 2000, Leonard Baio timely filed Contest 437 to the Claim and/or Preliminary Evaluation of Claim 533.
8. On May 2, 2000, Gary Strong timely filed Contest 672 to the Claim and/or Preliminary Evaluation of Claim 533.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 907 to the Claim and/or Preliminary Evaluation of Claim 533.
10. On May 2, 2000, Robert Bartell timely filed Contest 1142 to the Claim and/or Preliminary Evaluation of Claim 533.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1376 to the Claim and/or Preliminary Evaluation of Claim 533.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1611 to the Claim and/or Preliminary Evaluation of Claim 533.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1960 to the Claim and/or Preliminary Evaluation of Claim 533.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2412 to the Claim and/or Preliminary Evaluation of Claim 533.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2649 to the Claim and/or Preliminary Evaluation of Claim 533.
16. On May 8, 2000, John Briggs timely filed Contest 4399 to the Claim and/or Preliminary Evaluation of Claim 533.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4635 to the Claim and/or Preliminary Evaluation of Claim 533.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4867 to the Claim and/or Preliminary Evaluation of Claim 533.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5110 to the Claim and/or Preliminary Evaluation of Claim 533.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5343 to the Claim and/or Preliminary Evaluation of Claim 533.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5576 to the Claim and/or Preliminary Evaluation of Claim 533.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2947 to the Claim and/or Preliminary Evaluation of Claim 533.
23. 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 009.
24. 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).*
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2947. *See WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).*
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2203) to Claim 533.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
28. The USFS's Claim 533 states that lower end of the instream reach of Paradise Creek is located in the SWNE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.; however, the USFS claim map (OWRD Reference # Claim 377, Page 215) shows that lower end of the reach of this claim is where Paradise Creek flows into the Sycan River, and is located in the NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. Therefore, OWRD finds that the end of the instream reach for this claim is PARADISE CREEK TO NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.

B. DETERMINATION

1. Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with exception of the scrivener's error in the location of lower end of the instream reach of Paradise Creek in the original claim and in the August 3, 1999 claim amendment as described in Finding 28, above, which was incorporated into in the Preliminary Evaluation, and the Settlement Agreement; the location of lower end of the instream reach is corrected to the NESE, Section 22.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 533 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 533

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 215 and PAGE 277

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

SOURCE OF WATER: PARADISE CREEK, tributary to the SYCAN RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	64.0
June 1 to June 30	14.0
July 1 to July 31	3.6
Aug 1 to Aug 31	1.8
Sept 1 to Sept 30	1.4
Oct 1 to Oct 31	1.9

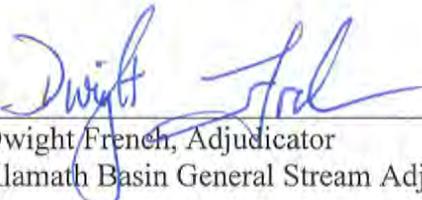
DATE OF PRIORITY: SEPTEMBER 17, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PARADISE CREEK FROM SENW, SECTION 11, TOWNSHIP 34 SOUTH, RANGE 15 EAST, W.M., TO NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 534

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 534) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 534 and/or Preliminary Evaluation of Claim 534.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 534 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 534 by the USFS, IT IS ORDERED that Claim 534 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 535

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 535) 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).
2. On August 3, 1999, the USFS timely amended Claim 535 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 204 to the Claim and/or Preliminary Evaluation of Claim 535.
5. On May 1, 2000, Leonard Baio timely filed Contest 439 to the Claim and/or Preliminary Evaluation of Claim 535.
6. On May 2, 2000, Gary Strong timely filed Contest 674 to the Claim and/or Preliminary Evaluation of Claim 535.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 909 to the Claim and/or Preliminary Evaluation of Claim 535.

8. On May 2, 2000, Robert Bartell timely filed Contest 1144 to the Claim and/or Preliminary Evaluation of Claim 535.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1378 to the Claim and/or Preliminary Evaluation of Claim 535.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1613 to the Claim and/or Preliminary Evaluation of Claim 535.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1962 to the Claim and/or Preliminary Evaluation of Claim 535.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2414 to the Claim and/or Preliminary Evaluation of Claim 535.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2651 to the Claim and/or Preliminary Evaluation of Claim 535.
14. On May 8, 2000, John Briggs timely filed Contest 4401 to the Claim and/or Preliminary Evaluation of Claim 535.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4636 to the Claim and/or Preliminary Evaluation of Claim 535.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4869 to the Claim and/or Preliminary Evaluation of Claim 535.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5112 to the Claim and/or Preliminary Evaluation of Claim 535.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5345 to the Claim and/or Preliminary Evaluation of Claim 535.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5578 to the Claim and/or Preliminary Evaluation of Claim 535.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2949 to the Claim and/or Preliminary Evaluation of Claim 535.
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 010.
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 February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2949, the remaining contest to Claim 535. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 535 is within or borders a federal reservation of land that is owned by the Claimant.
26. As explained in the GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897, the date of reservation date of November 15, 1974, and is based on a Declaration of Taking, November 15, 1974, Civil No. 74-894, U.S. District Court of Oregon.
27. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 535 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 535

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189

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

SOURCE OF WATER: SAND CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 33 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 600 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: NOVEMBER 15, 1974

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SAND CREEK FROM SWNE, SECTION 31, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M., TO NESW, SECTION 29, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 536

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 536) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 536 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 36.0 cfs to 63.0 cfs for June 1 to June 30, 35.0 cfs to 52.0 cfs for July 1 to July 31, 24.0 cfs to 31.0 cfs for Aug. 1 to Aug. 31, 22.0 cfs to 28.0 cfs for Sept. 1 to Sept. 30, 16.0 cfs to 22.0 cfs for Oct. 1 to Oct. 31, and 13.0 cfs to 20.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2205 to the Preliminary Evaluation of Claim 536.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 205 to the Claim and/or Preliminary Evaluation of Claim 536.
7. On May 1, 2000, Leonard Baio timely filed Contest 440 to the Claim and/or Preliminary Evaluation of Claim 536.
8. On May 2, 2000, Gary Strong timely filed Contest 675 to the Claim and/or Preliminary Evaluation of Claim 536.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 910 to the Claim and/or Preliminary Evaluation of Claim 536.
10. On May 2, 2000, Robert Bartell timely filed Contest 1145 to the Claim and/or Preliminary Evaluation of Claim 536.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1379 to the Claim and/or Preliminary Evaluation of Claim 536.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1614 to the Claim and/or Preliminary Evaluation of Claim 536.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1963 to the Claim and/or Preliminary Evaluation of Claim 536.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2415 to the Claim and/or Preliminary Evaluation of Claim 536.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2652 to the Claim and/or Preliminary Evaluation of Claim 536.
16. On May 8, 2000, John Briggs timely filed Contest 4402 to the Claim and/or Preliminary Evaluation of Claim 536.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4637 to the Claim and/or Preliminary Evaluation of Claim 536.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4870 to the Claim and/or Preliminary Evaluation of Claim 536.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5113 to the Claim and/or Preliminary Evaluation of Claim 536.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5346 to the Claim and/or Preliminary Evaluation of Claim 536.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5579 to the Claim and/or Preliminary Evaluation of Claim 536.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2950 to the Claim and/or Preliminary Evaluation of Claim 536.
23. 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 009.
24. 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).*
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2950. *See WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).*
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2205) to Claim 536.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 536 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 536

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189

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

SOURCE OF WATER: SAND CREEK, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	41.0
June 1 to June 30	63.0
July 1 to July 31	52.0
Aug 1 to Aug 31	31.0
Sept 1 to Sept 30	28.0
Oct 1 to Oct 31	22.0

DATE OF PRIORITY: NOVEMBER 15, 1974

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SAND CREEK FROM SWNE, SECTION 31, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M., TO NESW, SECTION 29, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 537

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 537) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 537 and/or Preliminary Evaluation of Claim 537.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 537 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 537 by the USFS, IT IS ORDERED that Claim 537 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 538

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 538) 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).
2. On August 3, 1999, the USFS timely amended Claim 538 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 207 to the Claim and/or Preliminary Evaluation of Claim 538.
5. On May 1, 2000, Leonard Baio timely filed Contest 442 to the Claim and/or Preliminary Evaluation of Claim 538.
6. On May 2, 2000, Gary Strong timely filed Contest 677 to the Claim and/or Preliminary Evaluation of Claim 538.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 912 to the Claim and/or Preliminary Evaluation of Claim 538.

8. On May 2, 2000, Robert Bartell timely filed Contest 1147 to the Claim and/or Preliminary Evaluation of Claim 538.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1381 to the Claim and/or Preliminary Evaluation of Claim 538.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1616 to the Claim and/or Preliminary Evaluation of Claim 538.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1965 to the Claim and/or Preliminary Evaluation of Claim 538.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2417 to the Claim and/or Preliminary Evaluation of Claim 538.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2654 to the Claim and/or Preliminary Evaluation of Claim 538.
14. On May 8, 2000, John Briggs timely filed Contest 4404 to the Claim and/or Preliminary Evaluation of Claim 538.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4639 to the Claim and/or Preliminary Evaluation of Claim 538.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4872 to the Claim and/or Preliminary Evaluation of Claim 538.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5115 to the Claim and/or Preliminary Evaluation of Claim 538.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5348 to the Claim and/or Preliminary Evaluation of Claim 538.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5581 to the Claim and/or Preliminary Evaluation of Claim 538.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2952 to the Claim and/or Preliminary Evaluation of Claim 538.
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 010.
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 February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2952, the remaining contest to Claim 538. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 538 is within or borders a federal reservation of land that is owned by the Claimant.
26. 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 has a reservation date of January 25, 1907 and is based on a Presidential Proclamation of January 25, 1907.
27. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. Based on the file and record herein, IT IS ORDERED that Claim 538 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 538

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189 and PAGE 190

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

SOURCE OF WATER: SAND CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 33 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 600 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: JANUARY 25, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SAND CREEK FROM SWNE, SECTION 35, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 31, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 539

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 539) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 539 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 36.0 cfs to 63.0 cfs for June 1 to June 30, 35.0 cfs to 52.0 cfs for July 1 to July 31, 24.0 cfs to 31.0 cfs for Aug. 1 to Aug. 31, 22.0 cfs to 28.0 cfs for Sept. 1 to Sept. 30, 16.0 cfs to 22.0 cfs for Oct. 1 to Oct. 31, and 13.0 cfs to 20.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved.
5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2207 to the Preliminary Evaluation of Claim 539.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 208 to the Claim and/or Preliminary Evaluation of Claim 539.
7. On May 1, 2000, Leonard Baio timely filed Contest 443 to the Claim and/or Preliminary Evaluation of Claim 539.
8. On May 2, 2000, Gary Strong timely filed Contest 678 to the Claim and/or Preliminary Evaluation of Claim 539.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 913 to the Claim and/or Preliminary Evaluation of Claim 539.
10. On May 2, 2000, Robert Bartell timely filed Contest 1148 to the Claim and/or Preliminary Evaluation of Claim 539.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1382 to the Claim and/or Preliminary Evaluation of Claim 539.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1617 to the Claim and/or Preliminary Evaluation of Claim 539.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1966 to the Claim and/or Preliminary Evaluation of Claim 539.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2418 to the Claim and/or Preliminary Evaluation of Claim 539.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2655 to the Claim and/or Preliminary Evaluation of Claim 539.
16. On May 8, 2000, John Briggs timely filed Contest 4405 to the Claim and/or Preliminary Evaluation of Claim 539.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4640 to the Claim and/or Preliminary Evaluation of Claim 539.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4873 to the Claim and/or Preliminary Evaluation of Claim 539.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5116 to the Claim and/or Preliminary Evaluation of Claim 539.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5349 to the Claim and/or Preliminary Evaluation of Claim 539.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5582 to the Claim and/or Preliminary Evaluation of Claim 539.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2953 to the Claim and/or Preliminary Evaluation of Claim 539.
23. 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 009.
24. 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).*
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2953. *See WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).*
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2207) to Claim 539.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 539 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 539

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189 and PAGE 190

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

SOURCE OF WATER: SAND CREEK, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	41.0
June 1 to June 30	63.0
July 1 to July 31	52.0
Aug 1 to Aug 31	31.0
Sept 1 to Sept 30	28.0
Oct 1 to Oct 31	22.0

DATE OF PRIORITY: JANUARY 25, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SAND CREEK FROM SWNE, SECTION 35, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 31, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 540

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 540) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 540 and/or Preliminary Evaluation of Claim 540.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 540 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 540 by the USFS, IT IS ORDERED that Claim 540 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 541

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 541) 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).
2. On August 3, 1999, the USFS timely amended Claim 541 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 21 cfs to 14 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 210 to the Claim and/or Preliminary Evaluation of Claim 541.

6. On May 1, 2000, Leonard Baio timely filed Contest 445 to the Claim and/or Preliminary Evaluation of Claim 541.
7. On May 2, 2000, Gary Strong timely filed Contest 680 to the Claim and/or Preliminary Evaluation of Claim 541.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 915 to the Claim and/or Preliminary Evaluation of Claim 541.
9. On May 2, 2000, Robert Bartell timely filed Contest 1150 to the Claim and/or Preliminary Evaluation of Claim 541.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1384 to the Claim and/or Preliminary Evaluation of Claim 541.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1619 to the Claim and/or Preliminary Evaluation of Claim 541.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1968 to the Claim and/or Preliminary Evaluation of Claim 541.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2420 to the Claim and/or Preliminary Evaluation of Claim 541.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2657 to the Claim and/or Preliminary Evaluation of Claim 541.
15. On May 8, 2000, John Briggs timely filed Contest 4407 to the Claim and/or Preliminary Evaluation of Claim 541.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4642 to the Claim and/or Preliminary Evaluation of Claim 541.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4875 to the Claim and/or Preliminary Evaluation of Claim 541.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5118 to the Claim and/or Preliminary Evaluation of Claim 541.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5351 to the Claim and/or Preliminary Evaluation of Claim 541.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5584 to the Claim and/or Preliminary Evaluation of Claim 541.

21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2955 to the Claim and/or Preliminary Evaluation of Claim 541.
22. 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 010.
23. 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).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2955, the remaining contest to Claim 541. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 541 is within or borders a federal reservation of land that is owned by the Claimant.
27. 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 has a reservation date of January 25, 1907, and is based on a Presidential Proclamation of January 25, 1907.
28. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.

3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. Based on the file and record herein, IT IS ORDERED that Claim 541 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 541

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189 and PAGE 190

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

SOURCE OF WATER: SCOTT CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 14 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 207 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: JANUARY 25, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SCOTT CREEK FROM SESW, SECTION 11, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 18, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 542

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 542) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 542 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 21.0 cfs to 32.0 cfs for June 1 to June 30, 16.0 cfs to 25.0 cfs for July 1 to July 31, 11.0 cfs to 14.0 cfs for Aug. 1 to Aug. 31, 9.2 cfs to 12.0 cfs for Sept. 1 to Sept. 30, 5.7 cfs to 9.1 cfs for Oct. 1 to Oct. 31, and 7.5 cfs to 8.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.

4. On September 30, 1999, Claim 485 was further amended to reflect a change in the place of use to include the headwaters of the main stem of Scott Creek and all tributaries of the main stem located on non-reserved lands.
5. The September 30, 1999 amendment changed the stream reach from SCOTT CREEK FROM SESW, SECTION 11, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 18, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M. to “THE HEADWATERS OF THE MAIN STEM [Scott Creek] AND ALL TRIBUTARIES OF THE MAIN STEM . . .” This amendment expands the place of use by at least 6 river miles, and includes use from sources of water not identified in the original claim. The original claim described a reach from an upstream point to a downstream point. The amendment places additional reaches upstream from the original reach, and includes reaches from sources of water not identified in the original claim.
6. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
7. On May 5, 2000, the Claimant, USFS, timely filed Contest 2209 to the Preliminary Evaluation of Claim 542.
8. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 211 to the Claim and/or Preliminary Evaluation of Claim 542.
9. On May 1, 2000, Leonard Baio timely filed Contest 446 to the Claim and/or Preliminary Evaluation of Claim 542.
10. On May 2, 2000, Gary Strong timely filed Contest 681 to the Claim and/or Preliminary Evaluation of Claim 542.
11. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 916 to the Claim and/or Preliminary Evaluation of Claim 542.
12. On May 2, 2000, Robert Bartell timely filed Contest 1151 to the Claim and/or Preliminary Evaluation of Claim 542.
13. On May 2, 2000, Margaret Jacobs timely filed Contest 1385 to the Claim and/or Preliminary Evaluation of Claim 542.
14. On May 2, 2000, Carolyn Obenchain timely filed Contest 1620 to the Claim and/or Preliminary Evaluation of Claim 542.
15. On May 4, 2000, Rodney Z. James timely filed Contest 1969 to the Claim and/or Preliminary Evaluation of Claim 542.
16. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2421 to the Claim and/or Preliminary Evaluation of Claim 542.

17. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2658 to the Claim and/or Preliminary Evaluation of Claim 542.
18. On May 8, 2000, John Briggs timely filed Contest 4408 to the Claim and/or Preliminary Evaluation of Claim 542.
19. On May 8, 2000, Peter M. Bourdet timely filed Contest 4643 to the Claim and/or Preliminary Evaluation of Claim 542.
20. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4876 to the Claim and/or Preliminary Evaluation of Claim 542.
21. On May 8, 2000, Thomas William Mallams timely filed Contest 5119 to the Claim and/or Preliminary Evaluation of Claim 542.
22. On May 8, 2000, Thomas H. Bentley timely filed Contest 5352 to the Claim and/or Preliminary Evaluation of Claim 542.
23. On May 8, 2000, Thomas E. Stephens timely filed Contest 5585 to the Claim and/or Preliminary Evaluation of Claim 542.
24. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2956 to the Claim and/or Preliminary Evaluation of Claim 542.
25. 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 009.
26. 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).
27. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2956. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
28. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242,

2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2209) to Claim 542.

29. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with the exception of the portion of the place of use that was expanded by the USFS's amendment of September 30, 1999 as described in Finding 5, above; the place of use recognized herein is consistent with both the USFS's original claim and with its August 3, 1999 amendment.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. OWRD finds that the claim amendment described in Findings 4 and 5, above, constitutes a new claim under ORS 539.210. The change in place of use is significant, including the addition of at least 6 additional river miles and the use of water from a source not originally claimed. There is no evidence on the record to suggest that the place of use for this claim was not reasonably ascertainable at the time of the claim filing deadline. As a result, this amendment may not be considered in the Findings of Fact and Partial Order of Determination for this claim.
6. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
7. Based on the file and record herein, IT IS ORDERED that Claim 542 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 542

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189 and PAGE 190

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

SOURCE OF WATER: SCOTT CREEK, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	19.0
June 1 to June 30	32.0
July 1 to July 31	25.0
Aug 1 to Aug 31	14.0
Sept 1 to Sept 30	12.0
Oct 1 to Oct 31	9.1

DATE OF PRIORITY: JANUARY 25, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SCOTT CREEK FROM SESW, SECTION 11, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 18, TOWNSHIP 31 SOUTH, RANGE 7 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 543

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 543) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 543 and/or Preliminary Evaluation of Claim 543.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 543 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 543 by the USFS, IT IS ORDERED that Claim 543 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 544

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 544) 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).
2. On August 3, 1999, the USFS timely amended Claim 544 as to rate of discharge of water for the lower and upper thresholds of flow.
3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 213 to the Claim and/or Preliminary Evaluation of Claim 544.
5. On May 1, 2000, Leonard Baio timely filed Contest 448 to the Claim and/or Preliminary Evaluation of Claim 544.
6. On May 2, 2000, Gary Strong timely filed Contest 683 to the Claim and/or Preliminary Evaluation of Claim 544.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 918 to the Claim and/or Preliminary Evaluation of Claim 544.

8. On May 2, 2000, Robert Bartell timely filed Contest 1153 to the Claim and/or Preliminary Evaluation of Claim 544.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1387 to the Claim and/or Preliminary Evaluation of Claim 544.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1622 to the Claim and/or Preliminary Evaluation of Claim 544.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1799 to the Claim and/or Preliminary Evaluation of Claim 544.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1971 to the Claim and/or Preliminary Evaluation of Claim 544.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2423 to the Claim and/or Preliminary Evaluation of Claim 544.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2660 to the Claim and/or Preliminary Evaluation of Claim 544.
15. On May 8, 2000, John Briggs timely filed Contest 4410 to the Claim and/or Preliminary Evaluation of Claim 544.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4645 to the Claim and/or Preliminary Evaluation of Claim 544.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4878 to the Claim and/or Preliminary Evaluation of Claim 544.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5121 to the Claim and/or Preliminary Evaluation of Claim 544.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5354 to the Claim and/or Preliminary Evaluation of Claim 544.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5587 to the Claim and/or Preliminary Evaluation of Claim 544.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2958 to the Claim and/or Preliminary Evaluation of Claim 544.
22. 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 010.

23. 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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Ambrose W. McAuliffe and Roger Nicholson. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
24. On December 31, 2002, the USFS amended the priority date of Claim 544 “from June 4, 1897 as originally claimed to July 31, 1971.”
25. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2958, the remaining contest to Claim 544. *See* WATERWATCH’S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
27. The place of use underlying Claim 544 is within or borders 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 unless the claimant amended the priority date to a later date. This claim has a reservation date of June 4, 1897, and is based on Presidential Proclamation of September 28, 1893, No 6, 28 Stat. 1240 and the Organic Administration Act of June 4, 1897, 16 U.S.C. 473-475, 477-482 and 551.
29. The rate, as amended by the USFS on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.

3. Based on the file and record herein, IT IS ORDERED that Claim 544 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. 544

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 205

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

SOURCE OF WATER: SEVENMILE CREEK, tributary to KLAMATH LAKE

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 76 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 403 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: JULY 31, 1971

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SEVENMILE CREEK FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M., TO SESE, SECTION 14, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 545

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 545) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 545 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 26.0 cfs to 28.0 cfs for June 1 to June 30, 16.0 cfs to 17.0 cfs for July 1 to July 31, 15.0 cfs to 17.0 cfs for Aug. 1 to Aug. 31, 16.0 cfs to 18.0 cfs for Sept. 1 to Sept. 30, 17.0 cfs to 19.0 cfs for Oct. 1 to Oct. 30, and 17.0 cfs to 19.0 cfs for Nov. 1 to Nov. 15. The amendment was a result of the exchange of correspondence between the Department and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. The Department intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On September 30, 1999, Claim 545 was further amended to reflect a change in the place of use to include the headwaters of the main stem of Sevenmile Creek and all tributaries of the main stem located on non-reserved lands.

5. The September 30, 1999 amendment changed the stream reach from SEVENMILE CREEK FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M., TO SESE, SECTION 14, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M. to “THE HEADWATERS OF THE MAIN STEM [Sevenmile Creek] AND ALL TRIBUTARIES OF THE MAIN STEM . . .” This amendment expands the place of use by at least 9 river miles, and includes use from sources of water not identified in the original claim. The original claim described a reach from an upstream point to a downstream point. The amendment places additional reaches upstream from the original reach, and includes reaches from sources of water not identified in the original claim.
6. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
7. On May 5, 2000, the Claimant, USFS, timely filed Contest 2211 to the Preliminary Evaluation of Claim 545.
8. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 214 to the Claim and/or Preliminary Evaluation of Claim 545.
9. On May 1, 2000, Leonard Baio timely filed Contest 449 to the Claim and/or Preliminary Evaluation of Claim 545.
10. On May 2, 2000, Gary Strong timely filed Contest 684 to the Claim and/or Preliminary Evaluation of Claim 545.
11. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 919 to the Claim and/or Preliminary Evaluation of Claim 545.
12. On May 2, 2000, Robert Bartell timely filed Contest 1154 to the Claim and/or Preliminary Evaluation of Claim 545.
13. On May 2, 2000, Margaret Jacobs timely filed Contest 1388 to the Claim and/or Preliminary Evaluation of Claim 545.
14. On May 2, 2000, Carolyn Obenchain timely filed Contest 1623 to the Claim and/or Preliminary Evaluation of Claim 545.
15. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1800 to the Claim and/or Preliminary Evaluation of Claim 545.
16. On May 4, 2000, Rodney Z. James timely filed Contest 1972 to the Claim and/or Preliminary Evaluation of Claim 545.
17. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2424 to the Claim and/or Preliminary Evaluation of Claim 545.

18. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2661 to the Claim and/or Preliminary Evaluation of Claim 545.
19. On May 8, 2000, John Briggs timely filed Contest 4411 to the Claim and/or Preliminary Evaluation of Claim 545.
20. On May 8, 2000, Peter M. Bourdet timely filed Contest 4646 to the Claim and/or Preliminary Evaluation of Claim 545.
21. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4879 to the Claim and/or Preliminary Evaluation of Claim 545.
22. On May 8, 2000, Thomas William Mallams timely filed Contest 5122 to the Claim and/or Preliminary Evaluation of Claim 545.
23. On May 8, 2000, Thomas H. Bentley timely filed Contest 5355 to the Claim and/or Preliminary Evaluation of Claim 545.
24. On May 8, 2000, Thomas E. Stephens timely filed Contest 5588 to the Claim and/or Preliminary Evaluation of Claim 545.
25. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2959 to the Claim and/or Preliminary Evaluation of Claim 545.
26. 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 009.
27. 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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Ambrose W. McAuliffe and Roger Nicholson. *See NOTICE OF WITHDRAWAL OF BAIO ET AL'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).*
28. On December 31, 2002, the USFS amended the priority date of Claim 545 "from June 4, 1897 as originally claimed to July 31, 1971".
29. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2959. *See WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).*
30. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242,

2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2211) to Claim 545.

31. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. that portion of the place of use that was expanded by the USFS's amendment of September 30, 1999; the place of use recognized herein is consistent with both the USFS's original claim and with its August 3, 1999 amendment; and
 - b. the priority date is changed to July 31, 1971 as set forth in the USFS's amended claim dated December 31, 2002.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. The Department finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. OWRD finds that the claim amendment described in Findings 4 and 5, above, constitutes a new claim under ORS 539.210. The change in place of use is significant, including the addition of at least 9 additional river miles and the use of water from a source not originally claimed. There is no evidence on the record to suggest that the place of use for this claim was not reasonably ascertainable at the time of the claim filing deadline. As a result, this amendment may not be considered in the Findings of Fact and Partial Order of Determination for this claim.
6. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
7. Based on the file and record herein, IT IS ORDERED that Claim 545 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 545

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 205

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

SOURCE OF WATER: SEVENMILE CREEK, tributary to KLAMATH LAKE

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	36.0
June 1 to June 30	28.0
July 1 to July 31	17.0
Aug 1 to Aug 31	17.0
Sept 1 to Sept 30	18.0
Oct 1 to Oct 31	19.0

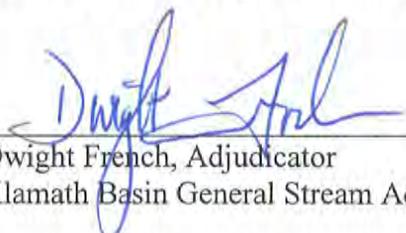
DATE OF PRIORITY: JULY 31, 1971

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SEVENMILE CREEK FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M., TO SESE, SECTION 14, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 546

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 546) 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 Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.
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 claim was denied.
3. Several timely contests, including one by the USFS, were filed to Claim 546 and/or Preliminary Evaluation of Claim 546.
4. 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 004.
5. On December 30, 2002 the Claimant, USFS, voluntarily withdrew Claim 546 which thereby resolved all contests. *See* UNITED STATES' NOTICE OF WITHDRAWAL OF CLAIMS (Dec. 30, 2002).
6. On December 31, 2002, the Adjudicator withdrew Case 004 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 546 by the USFS, IT IS ORDERED that Claim 546 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 547

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 547) 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).
2. On August 3, 1999, the USFS timely amended Claim 547 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 19 cfs to 6.5 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 216 to the Claim and/or Preliminary Evaluation of Claim 547.

6. On May 1, 2000, Leonard Baio timely filed Contest 451 to the Claim and/or Preliminary Evaluation of Claim 547.
7. On May 2, 2000, Gary Strong timely filed Contest 686 to the Claim and/or Preliminary Evaluation of Claim 547.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 921 to the Claim and/or Preliminary Evaluation of Claim 547.
9. On May 2, 2000, Robert Bartell timely filed Contest 1156 to the Claim and/or Preliminary Evaluation of Claim 547.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1390 to the Claim and/or Preliminary Evaluation of Claim 547.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1625 to the Claim and/or Preliminary Evaluation of Claim 547.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1974 to the Claim and/or Preliminary Evaluation of Claim 547.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2426 to the Claim and/or Preliminary Evaluation of Claim 547.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2663 to the Claim and/or Preliminary Evaluation of Claim 547.
15. On May 8, 2000, John Briggs timely filed Contest 4413 to the Claim and/or Preliminary Evaluation of Claim 547.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4648 to the Claim and/or Preliminary Evaluation of Claim 547.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4881 to the Claim and/or Preliminary Evaluation of Claim 547.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5124 to the Claim and/or Preliminary Evaluation of Claim 547.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5357 to the Claim and/or Preliminary Evaluation of Claim 547.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5590 to the Claim and/or Preliminary Evaluation of Claim 547.

21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2961 to the Claim and/or Preliminary Evaluation of Claim 547.
22. 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 010.
23. 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).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2961, the remaining contest to Claim 547. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 547 is within or borders a federal reservation of land that is owned by the Claimant.
27. 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 has a reservation date of June 4, 1897, and is based on Presidential Proclamation of September 28, 1893, No 6, 28 Stat. 1240 and the Organic Administration Act of June 4, 1897, 16 U.S.C. 473-475, 477-482 and 551.
28. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.

3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENTS OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. Based on the file and record herein, IT IS ORDERED that Claim 547 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 547

CLAIM MAP REFERENCE: USFS # F 13 / OWRD # 97-571-0102

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

SOURCE OF WATER: SINK CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 6.5 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 367 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: JUNE 4, 1897

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SINK CREEK FROM NESE, SECTION 11, TOWNSHIP 28 SOUTH, RANGE 6 EAST, W.M., TO NENE, SECTION 13, TOWNSHIP 28 SOUTH, RANGE 6 EAST, W.M

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 548

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 548) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 548 as follows: (1) claimed water quantities were amended for the “[i]ntegration of water availability estimates provided by Oregon Water Resources Department pursuant to OAR 690-28-040(5)” and (2) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 15.7 cfs to 27.8 cfs for June 1 to June 30, and 2.1 cfs to 4.0 cfs for Oct. 1 to Oct. 31. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant’s need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.

5. On May 5, 2000, the Claimant, USFS, timely filed Contest 2213 to the Preliminary Evaluation of Claim 548.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 217 to the Claim and/or Preliminary Evaluation of Claim 548.
7. On May 1, 2000, Leonard Baio timely filed Contest 452 to the Claim and/or Preliminary Evaluation of Claim 548.
8. On May 2, 2000, Gary Strong timely filed Contest 687 to the Claim and/or Preliminary Evaluation of Claim 548.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 922 to the Claim and/or Preliminary Evaluation of Claim 548.
10. On May 2, 2000, Robert Bartell timely filed Contest 1157 to the Claim and/or Preliminary Evaluation of Claim 548.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1391 to the Claim and/or Preliminary Evaluation of Claim 548.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1626 to the Claim and/or Preliminary Evaluation of Claim 548.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1975 to the Claim and/or Preliminary Evaluation of Claim 548.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2427 to the Claim and/or Preliminary Evaluation of Claim 548.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2664 to the Claim and/or Preliminary Evaluation of Claim 548.
16. On May 8, 2000, John Briggs timely filed Contest 4414 to the Claim and/or Preliminary Evaluation of Claim 548.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4649 to the Claim and/or Preliminary Evaluation of Claim 548.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4882 to the Claim and/or Preliminary Evaluation of Claim 548.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5125 to the Claim and/or Preliminary Evaluation of Claim 548.

20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5358 to the Claim and/or Preliminary Evaluation of Claim 548.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5591 to the Claim and/or Preliminary Evaluation of Claim 548.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2962 to the Claim and/or Preliminary Evaluation of Claim 548.
23. 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 009.
24. 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).
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2962. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2213) to Claim 548.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein.
2. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. The Organic Administration Act of 1897 for a federal reserved water right is a valid basis for this claim. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED ON THE ORGANIC ADMINISTRATION ACT OF 1897 is incorporated as if set forth fully herein.
6. Based on the file and record herein, IT IS ORDERED that Claim 548 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 548

CLAIM MAP REFERENCE: USFS # F 14 / OWRD # 97-572-0090

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

SOURCE OF WATER: SINK CREEK, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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

Period of Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	12.6
June 1 to June 30	27.8
July 1 to July 31	11.9
Aug 1 to Aug 31	5.9
Sept 1 to Sept 30	4.3
Oct 1 to Oct 31	4.0

DATE OF PRIORITY: JUNE 4, 1897

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SINK CREEK FROM NESE, SECTION 11, TOWNSHIP 28 SOUTH, RANGE 6 EAST, W.M., TO NENE, SECTION 13, TOWNSHIP 28 SOUTH, RANGE 6 EAST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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 549

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 549) 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).
2. On August 3, 1999, the USFS timely amended Claim 549 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 43 cfs to 41 cfs. The amendment was a result of the exchange of correspondence between OWRD and the Claimant concerning the Claimant's need to incorporate information concerning instream flow requirements. OWRD intended to provide this information to the Claimant, but it was not available at the time of the claim filing deadline.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved as amended on August 3, 1999.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 218 to the Claim and/or Preliminary Evaluation of Claim 549.

6. On May 1, 2000, Leonard Baio timely filed Contest 453 to the Claim and/or Preliminary Evaluation of Claim 549.
7. On May 2, 2000, Gary Strong timely filed Contest 688 to the Claim and/or Preliminary Evaluation of Claim 549.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 923 to the Claim and/or Preliminary Evaluation of Claim 549.
9. On May 2, 2000, Robert Bartell timely filed Contest 1158 to the Claim and/or Preliminary Evaluation of Claim 549.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1392 to the Claim and/or Preliminary Evaluation of Claim 549.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1627 to the Claim and/or Preliminary Evaluation of Claim 549.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1976 to the Claim and/or Preliminary Evaluation of Claim 549.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2428 to the Claim and/or Preliminary Evaluation of Claim 549.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2665 to the Claim and/or Preliminary Evaluation of Claim 549.
15. On May 8, 2000, John Briggs timely filed Contest 4415 to the Claim and/or Preliminary Evaluation of Claim 549.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4650 to the Claim and/or Preliminary Evaluation of Claim 549.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4883 to the Claim and/or Preliminary Evaluation of Claim 549.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5126 to the Claim and/or Preliminary Evaluation of Claim 549.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5359 to the Claim and/or Preliminary Evaluation of Claim 549.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5592 to the Claim and/or Preliminary Evaluation of Claim 549.

21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2963 to the Claim and/or Preliminary Evaluation of Claim 549.
22. 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 010.
23. 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).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2963, the remaining contest to Claim 549. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 549 is within or borders a federal reservation of land that is owned by the Claimant.
- 27.
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 has a reservation date of March 2, 1907, and is based on a Presidential Proclamation of March 2, 1907.
29. The rate, as amended by the USFS' on August 3, 1999, and the season of use claimed 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 purpose 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. The instream flows recognized pursuant to this claim are not additive to any other instream flows based on other water rights, permits or claims within the same stream reach or a portion of the same stream reach.

3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENTS OF CLAIMS is incorporated as if set forth fully herein.
4. OWRD finds that the claim amendment described in Findings 2 and 3, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 2 and 3, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's claim for consideration in this Findings of Fact and Partial Order of Determination.
5. Based on the file and record herein, IT IS ORDERED that Claim 549 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 549

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 259

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

SOURCE OF WATER: SPENCER CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: INSTREAM USE TO PROVIDE FOR FAVORABLE CONDITONS OF FLOW

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 41 CUBIC FEET PER SECOND (CFS) TOA CAP FLOW OF 402 CFS; THE INSTREAM FLOW ALLOCATED PURSUANT TO THIS CLAIM IS NOT ADDITIVE TO ANY OTHER INSTREAM FLOWS WITHIN THE SAME STREAM REACH OR A PORTION OF THE SAME STREAM

PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

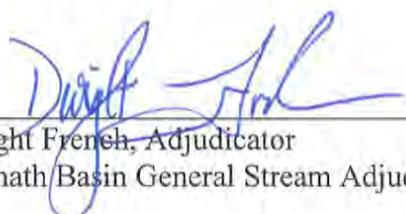
DATE OF PRIORITY: MARCH 2, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPENCER CREEK FROM NWSW, SECTION 18, TOWNSHIP 38 SOUTH, RANGE 6 EAST, W.M., TO NWSE, SECTION 18, TOWNSHIP 38 SOUTH, RANGE 6 EAST, W.M

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath/Basin General Stream Adjudication