

**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 563

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 563) 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 563 as to the 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 232 to the Claim and/or Preliminary Evaluation of Claim 563.
5. On May 1, 2000, Leonard Baio timely filed Contest 467 to the Claim and/or Preliminary Evaluation of Claim 563.
6. On May 2, 2000, Gary Strong timely filed Contest 702 to the Claim and/or Preliminary Evaluation of Claim 563.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 937 to the Claim and/or Preliminary Evaluation of Claim 563.

8. On May 2, 2000, Robert Bartell timely filed Contest 1172 to the Claim and/or Preliminary Evaluation of Claim 563.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1406 to the Claim and/or Preliminary Evaluation of Claim 563.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1641 to the Claim and/or Preliminary Evaluation of Claim 563.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1990 to the Claim and/or Preliminary Evaluation of Claim 563.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2442 to the Claim and/or Preliminary Evaluation of Claim 563.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2679 to the Claim and/or Preliminary Evaluation of Claim 563.
14. On May 8, 2000, John Briggs timely filed Contest 4429 to the Claim and/or Preliminary Evaluation of Claim 563.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4664 to the Claim and/or Preliminary Evaluation of Claim 563.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4897 to the Claim and/or Preliminary Evaluation of Claim 563.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5140 to the Claim and/or Preliminary Evaluation of Claim 563.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5373 to the Claim and/or Preliminary Evaluation of Claim 563.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5606 to the Claim and/or Preliminary Evaluation of Claim 563.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2977 to the Claim and/or Preliminary Evaluation of Claim 563.
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 2977, the remaining contest to Claim 563. *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 563 is within or borders a federal reservation of land that is owned by the Claimant.
26. Claim 560 and Claim 563 were both submitted by the USFS. The USFS claimed March 2, 1907 as the federal reservation date upon which Claim 560 is based; however, this date is consistent with the particulars of Claim 563. The USFS claimed June 21, 1956¹ as the federal reservation date upon which the Claim 563 is based; however, this date is consistent with the particulars of Claim 560.
 - Identical copies of a map titled "Land Status for Cow Creek Instream Flow Reach" ("Land Status Map") can be found within both Claims 560 and 563 (*see* Claim 560, Page 97-584-0025, and Claim 563, Page 97-587-0024). This map shows lands within SECTION 11, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M with a "Historical Land Status Code" of "JJ," and lands within SECTION 14, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M with a "Historical Land Status Code" of "OO."
 - Claim 560 contains supporting documents pertaining to land use Status Code JJ which includes an Order Exchanging Administrative Jurisdiction, June 21, 1956, 6-23-56, Fed. Reg. 4525. This Order confirms a reservation date of June 21, 1956 for SECTION 11, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M., but does not confirm a reservation date of June 21, 1956 for SECTION 14, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M. Claim 560 does not does not contain supporting documents pertaining to land use Status Code OO.
 - Claim 563 contains supporting documents pertaining to land use Status Code OO which includes the Presidential Proclamation of March 2, 1907. Claim 563 does not does not contain supporting documents pertaining to land use Status Code JJ.

¹ The claimed date was actually June 12, 1956; this date, based on the Order Exchanging Administrative Jurisdiction, June 21, 1956, 6-23-56, Fed. Reg. 4525 contains a clerical error – it should read June 21, 1956.

- Claim 560 describes an “Upper Reach” of Cow Creek from SESW, SECTION 11, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M., to SESW, SECTION 11, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M.
- Claim 563 describes a “Lower Reach” of Cow Creek from NENW, SECTION 14, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M., TO NESE, SECTION 14, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M.
- On October 14, 1999, the USFS submitted a Mylar claim map to OWRD showing the upper and lower reaches of Cow Creek. (Claim Map Reference – Mylar filed as Claim #377, Page 265). The end of the instream flow reach for Claim 560 (upper reach) and the beginning and end of the instream flow reach for Claim 563 (lower reach) shown on the Mylar claim map are not consistent with their respective claimed place of use or the Land Status Map (*see* Claim 560, Page 97-584-0025, and Claim 563, Page 97-587-0024), or the Order Exchanging Administrative Jurisdiction, June 21, 1956. The Mylar map shows the end of the reach for Claim 560 contiguous with the beginning of the reach for Claim 563, but located in the NESE, Section 14, rather than at the section-line boundary between sections 11 and 14. According to the USFS’ claimed place of use description, Claim 563 ends at the Oregon-California border on the section-line of Section 14, and not in California as shown on the Mylar claim map and Land Status Map.

The totality of the records for Claims 560 and 563, including the documents submitted by April 30, 1997 claim filing deadline, show a clear intention by the USFS to claim a reservation date of June 21, 1956 for Claim 560, and a reservation date of March 2, 1907 for Claim 563.

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. OWRD finds Claim 563 has a reservation date of March 2, 1907, and is based on a Presidential Proclamation of March 2, 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 priority date, consistent with Finding 26, above, is March 2, 2007.

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. Based on the file and record herein, IT IS ORDERED that Claim 563 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 563

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 265

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

SOURCE OF WATER: COW CREEK, tributary to BEAVER CREEK

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 281 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:

COW CREEK FROM NENW, SECTION 14, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M., TO NESE, SECTION 14, TOWNSHIP 41 SOUTH, RANGE 1 WEST, W.M.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication