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 AGRICULTURE, FOREST SERVICE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 716

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 580) 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 580, 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, in response to OWRD's request, the USFS divided Claim 580 by submitting a two additional Statements and Proofs of Claim that covered certain portions of the original Claim 580. OWRD labeled these as Claim 713 and Claim 716.

4. The August 3, 1999 Statement and Proof of Claim for Claim 716 amended two elements of the original Claim 580 that pertain to the Claim 716 stream reach. First, it changed the period of use from June 1 through November 15 to May 1 through November 15. Second, it increased the natural flow limits from 63.0 cfs to 93.0 cfs for June 1 to June 30, 47.0 cfs to 64.0 cfs for July 1 to July 31, 45.0 cfs to 57.0 cfs for Aug. 1 to Aug. 31, 44.0 cfs to 60.0 cfs for Sept. 1 to Sept. 30, 49.0 cfs to 64.0 cfs for Oct. 1 to Oct. 30, and 58.0 cfs to 64.0 cfs for Nov. 1 to Nov. 15. This 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 716 was approved.

6. On May 5, 2000, the Claimant, USFS, timely filed Contest 2246 to the Preliminary Evaluation of Claim 716.

7. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 267 to the Claim and/or Preliminary Evaluation of Claim 716.

8. On May 1, 2000, Leonard Baio timely filed Contest 502 to the Claim and/or Preliminary Evaluation of Claim 716.

9. On May 2, 2000, Gary Strong timely filed Contest 737 to the Claim and/or Preliminary Evaluation of Claim 716.

10. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 972 to the Claim and/or Preliminary Evaluation of Claim 716.

11. On May 2, 2000, Robert Bartell timely filed Contest 1207 to the Claim and/or Preliminary Evaluation of Claim 716.

12. On May 2, 2000, Margaret Jacobs timely filed Contest 1441 to the Claim and/or Preliminary Evaluation of Claim 716.

13. On May 2, 2000, Carolyn Obenchain timely filed Contest 1676 to the Claim and/or Preliminary Evaluation of Claim 716.

14. On May 4, 2000, Rodney Z. James timely filed Contest 2025 to the Claim and/or Preliminary Evaluation of Claim 716.

15. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2477 to the Claim and/or Preliminary Evaluation of Claim 716.

16. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2714 to the Claim and/or Preliminary Evaluation of Claim 716.

17. On May 8, 2000, John Briggs timely filed Contest 4464 to the Claim and/or Preliminary Evaluation of Claim 716.

18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4699 to the Claim and/or Preliminary Evaluation of Claim 716.

19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4932 to the Claim and/or Preliminary Evaluation of Claim 716.

20. On May 8, 2000, Thomas William Mallams timely filed Contest 5175 to the Claim and/or Preliminary Evaluation of Claim 716.

21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5408 to the Claim and/or Preliminary Evaluation of Claim 716.

22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5641 to the Claim and/or Preliminary Evaluation of Claim 716.

23. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 3083 to the Claim and/or Preliminary Evaluation of Claim 716.

24. 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.

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, 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).

26. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 3083. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).

27. 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 2246) to Claim 716.

28. 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 Finding 4, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Finding 4, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's Claim 716 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 716 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 716

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 192

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

SOURCE OF WATER: WILLIAMSON RIVER, 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	116.0
June 1 to June 30	93.0
July 1 to July 31	64.0
Aug 1 to Aug 31	57.0
Sept 1 to Sept 30	60.0
Oct 1 to Oct 31	64.0

DATE OF PRIORITY: NOVEMBER 15, 1974

THE PLACE OF USE IS LOCATED AS FOLLOWS:
WILLIAMSON RIVER FROM SENE, SECTION 12, TOWNSHIP 31 SOUTH, RANGE 10 EAST, W.M., TO NWNE, SECTION 12, TOWNSHIP 31 SOUTH, RANGE 10 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