

**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 470

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 470) 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 470 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 52 cfs to 50 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 139 to the Claim and/or Preliminary Evaluation of Claim 470.
6. On May 1, 2000, Leonard Baio timely filed Contest 374 to the Claim and/or Preliminary Evaluation of Claim 470.

7. On May 2, 2000, Gary Strong timely filed Contest 609 to the Claim and/or Preliminary Evaluation of Claim 470.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 844 to the Claim and/or Preliminary Evaluation of Claim 470.
9. On May 2, 2000, Robert Bartell timely filed Contest 1079 to the Claim and/or Preliminary Evaluation of Claim 470.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1314 to the Claim and/or Preliminary Evaluation of Claim 470.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1548 to the Claim and/or Preliminary Evaluation of Claim 470.
12. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1793 to the Claim and/or Preliminary Evaluation of Claim 470.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1897 to the Claim and/or Preliminary Evaluation of Claim 470.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2349 to the Claim and/or Preliminary Evaluation of Claim 470.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2586 to the Claim and/or Preliminary Evaluation of Claim 470.
16. On May 8, 2000, John Briggs timely filed Contest 4336 to the Claim and/or Preliminary Evaluation of Claim 470.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4571 to the Claim and/or Preliminary Evaluation of Claim 470.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4804 to the Claim and/or Preliminary Evaluation of Claim 470.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5047 to the Claim and/or Preliminary Evaluation of Claim 470.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5280 to the Claim and/or Preliminary Evaluation of Claim 470.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5513 to the Claim and/or Preliminary Evaluation of Claim 470.
22. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2899 to the Claim and/or Preliminary Evaluation of Claim 470.

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 010.
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, 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).
25. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2899, the remaining contest to Claim 470. *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 470 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. 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. 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 470 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 470

CLAIM MAP REFERENCE: USFS # C2 / OWRD # 97-494-0086

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

SOURCE OF WATER: ANNIE CREEK, tributary to the WOOD RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 50 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 565 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:

ANNIE CREEK FROM NWSE, SECTION 25, TOWNSHIP 32 SOUTH, RANGE 6 EAST, W.M., TO NENE, SECTION 36, TOWNSHIP 32 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