

**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 471

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 471) 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 471 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 140 to the Claim and/or Preliminary Evaluation of Claim 471.
5. On May 1, 2000, Leonard Baio timely filed Contest 375 to the Claim and/or Preliminary Evaluation of Claim 471.
6. On May 2, 2000, Gary Strong timely filed Contest 610 to the Claim and/or Preliminary Evaluation of Claim 471.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 845 to the Claim and/or Preliminary Evaluation of Claim 471.

8. On May 2, 2000, Robert Bartell timely filed Contest 1080 to the Claim and/or Preliminary Evaluation of Claim 471.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1315 to the Claim and/or Preliminary Evaluation of Claim 471.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1549 to the Claim and/or Preliminary Evaluation of Claim 471.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1898 to the Claim and/or Preliminary Evaluation of Claim 471.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2350 to the Claim and/or Preliminary Evaluation of Claim 471.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2587 to the Claim and/or Preliminary Evaluation of Claim 471.
14. On May 8, 2000, John Briggs timely filed Contest 4337 to the Claim and/or Preliminary Evaluation of Claim 471.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4572 to the Claim and/or Preliminary Evaluation of Claim 471.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4805 to the Claim and/or Preliminary Evaluation of Claim 471.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5048 to the Claim and/or Preliminary Evaluation of Claim 471.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5281 to the Claim and/or Preliminary Evaluation of Claim 471.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5514 to the Claim and/or Preliminary Evaluation of Claim 471.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2900 to the Claim and/or Preliminary Evaluation of Claim 471.
21. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Medford Irrigation District, and Rogue River Valley Irrigation District timely filed Contest 3244 to the Claim and/or Preliminary Evaluation of Claim 471.

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 May 10, 2002, the Langell Valley Irrigation District and Horsefly Irrigation District withdrew without prejudice from Contest 3244. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS (May. 10, 2002).
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 December 2, 2002, Medford Irrigation District, and Rogue River Valley Irrigation District withdrew Contest 3244. *See* WITHDRAWAL OF MEDFORD IRRIGATION DISTRICT AND ROGUE RIVER VALLEY IRRIGATION DISTRICT CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 2, 2002).
26. On December 31, 2002, the USFS amended the priority date of Claim 471 "from June 4, 1897 as originally claimed to April 1, 1910."
27. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2900, the remaining contest to Claim 471. *See* WATER WATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
28. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
29. The place of use underlying Claim 471 is within or borders a federal reservation of land that is owned by the Claimant.
30. 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.
31. 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 471 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. 471

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 240

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

SOURCE OF WATER: BILLIE 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 9.6 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 89 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

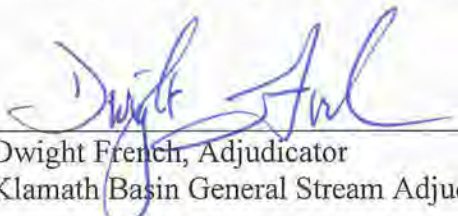
DATE OF PRIORITY: APRIL 1, 1910

THE PLACE OF USE IS LOCATED AS FOLLOWS:

BILLIE CREEK FROM NWNW, SECTION 21, TOWNSHIP 36 SOUTH, RANGE 5 EAST, W.M., TO SESW, SECTION 34, TOWNSHIP 36 SOUTH, RANGE 5 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