

**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 472

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 472) 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 472 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 0.4 cfs to 0.5 cfs for July 1 to July 31, and 0.2 cfs to 0.3 cfs for Aug. 1 to Aug. 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 2163 to the Preliminary Evaluation of Claim 472.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 141 to the Claim and/or Preliminary Evaluation of Claim 472.
7. On May 1, 2000, Leonard Baio timely filed Contest 376 to the Claim and/or Preliminary Evaluation of Claim 472.
8. On May 2, 2000, Gary Strong timely filed Contest 611 to the Claim and/or Preliminary Evaluation of Claim 472.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 846 to the Claim and/or Preliminary Evaluation of Claim 472.
10. On May 2, 2000, Robert Bartell timely filed Contest 1081 to the Claim and/or Preliminary Evaluation of Claim 472.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1316 to the Claim and/or Preliminary Evaluation of Claim 472.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1550 to the Claim and/or Preliminary Evaluation of Claim 472.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1899 to the Claim and/or Preliminary Evaluation of Claim 472.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2351 to the Claim and/or Preliminary Evaluation of Claim 472.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2588 to the Claim and/or Preliminary Evaluation of Claim 472.
16. On May 8, 2000, John Briggs timely filed Contest 4338 to the Claim and/or Preliminary Evaluation of Claim 472.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4573 to the Claim and/or Preliminary Evaluation of Claim 472.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4806 to the Claim and/or Preliminary Evaluation of Claim 472.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5049 to the Claim and/or Preliminary Evaluation of Claim 472.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5282 to the Claim and/or Preliminary Evaluation of Claim 472.

21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5515 to the Claim and/or Preliminary Evaluation of Claim 472.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2901 to the Claim and/or Preliminary Evaluation of Claim 472.
23. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Medford Irrigation District, and Rogue River Valley Irrigation District timely filed Contest 3245 to the Claim and/or Preliminary Evaluation of Claim 472.
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). *See also* NOTICE OF ERRATA (July 18, 2002).
26. On December 2, 2002, Medford Irrigation District, and Rogue River Valley Irrigation District withdrew Contest 3245. *See* WITHDRAWAL OF MEDFORD IRRIGATION DISTRICT AND ROGUE RIVER VALLEY IRRIGATION DISTRICT CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Dec. 2, 2002).
27. On December 13, 2002, the Langell Valley Irrigation District and Horsefly Irrigation District withdrew without prejudice from Contest 3245. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS (Dec.13, 2002).
28. On December 31, 2002, the USFS amended the priority date of Claim 472 “from June 4, 1897 as originally claimed to April 1, 1910.”
29. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2901. *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 2163) to Claim 472.
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 exception that the priority date is changed to April 1, 1910 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 472 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 472

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 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	7.3
June 1 to June 30	3.0
July 1 to July 31	0.5
Aug 1 to Aug 31	0.3
Sept 1 to Sept 30	0.3
Oct 1 to Oct 31	0.4


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