

**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 474

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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 474) 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 474 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.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 143 to the Claim and/or Preliminary Evaluation of Claim 474.
5. On May 1, 2000, Leonard Baio timely filed Contest 378 to the Claim and/or Preliminary Evaluation of Claim 474.
6. On May 2, 2000, Gary Strong timely filed Contest 613 to the Claim and/or Preliminary Evaluation of Claim 474.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 848 to the Claim and/or Preliminary Evaluation of Claim 474.

8. On May 2, 2000, Robert Bartell timely filed Contest 1083 to the Claim and/or Preliminary Evaluation of Claim 474.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1318 to the Claim and/or Preliminary Evaluation of Claim 474.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1552 to the Claim and/or Preliminary Evaluation of Claim 474.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1795 to the Claim and/or Preliminary Evaluation of Claim 474.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1901 to the Claim and/or Preliminary Evaluation of Claim 474.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2353 to the Claim and/or Preliminary Evaluation of Claim 474.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2590 to the Claim and/or Preliminary Evaluation of Claim 474.
15. On May 8, 2000, John Briggs timely filed Contest 4340 to the Claim and/or Preliminary Evaluation of Claim 474.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4575 to the Claim and/or Preliminary Evaluation of Claim 474.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4808 to the Claim and/or Preliminary Evaluation of Claim 474.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5051 to the Claim and/or Preliminary Evaluation of Claim 474.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5284 to the Claim and/or Preliminary Evaluation of Claim 474.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5517 to the Claim and/or Preliminary Evaluation of Claim 474.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2903 to the Claim and/or Preliminary Evaluation of Claim 474.
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 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).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2903, the remaining contest to Claim 474. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 474 is within or borders a federal reservation of land that is owned by the Claimant.
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. 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.
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 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 474 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 474**

**CLAIM MAP REFERENCE:** MYLAR FILED AS CLAIM # 377, PAGE 217

**CLAIMANT:** UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
1220 SW 3<sup>RD</sup> ROOM 1734  
PORTLAND, OR 97204

**SOURCE OF WATER:** CHERRY CREEK, tributary to FOURMILE 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 293 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:**

CHERRY CREEK FROM NWNW, SECTION 28, TOWNSHIP 34 SOUTH, RANGE 6 EAST, W.M., TO NWSW, SECTION 14, TOWNSHIP 34 SOUTH, RANGE 6 EAST, W.M

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



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Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication