

**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 483

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 483) 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 483 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 152 to the Claim and/or Preliminary Evaluation of Claim 483.
5. On May 1, 2000, Leonard Baio timely filed Contest 387 to the Claim and/or Preliminary Evaluation of Claim 483.
6. On May 2, 2000, Gary Strong timely filed Contest 622 to the Claim and/or Preliminary Evaluation of Claim 483.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 857 to the Claim and/or Preliminary Evaluation of Claim 483.

8. On May 2, 2000, Robert Bartell timely filed Contest 1092 to the Claim and/or Preliminary Evaluation of Claim 483.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1327 to the Claim and/or Preliminary Evaluation of Claim 483.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1561 to the Claim and/or Preliminary Evaluation of Claim 483.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1797 to the Claim and/or Preliminary Evaluation of Claim 483.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1910 to the Claim and/or Preliminary Evaluation of Claim 483.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2362 to the Claim and/or Preliminary Evaluation of Claim 483.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2599 to the Claim and/or Preliminary Evaluation of Claim 483.
15. On May 8, 2000, John Briggs timely filed Contest 4349 to the Claim and/or Preliminary Evaluation of Claim 483.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4584 to the Claim and/or Preliminary Evaluation of Claim 483.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4817 to the Claim and/or Preliminary Evaluation of Claim 483.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5060 to the Claim and/or Preliminary Evaluation of Claim 483.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5293 to the Claim and/or Preliminary Evaluation of Claim 483.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5526 to the Claim and/or Preliminary Evaluation of Claim 483.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2912 to the Claim and/or Preliminary Evaluation of Claim 483.
22. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Medford Irrigation District, and Rogue River Valley Irrigation District timely filed Contest 3247 to the Claim and/or Preliminary Evaluation of Claim 483.

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 May 10, 2002, the Langell Valley Irrigation District and Horsefly Irrigation District withdrew without prejudice from Contest 3247. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS (May. 10, 2002).
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, 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 BAIIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
26. On December 2, 2002, Medford Irrigation District, and Rogue River Valley Irrigation District withdrew Contest 3247. *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 On December 31, 2002, the USFS amended the priority date of Claim 483 “from June 4, 1897 as originally claimed to April 1, 1910.”
28. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2912, the remaining contest to Claim 483. *See* WATERWATCH’S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
29. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
30. The place of use underlying Claim 483 is within or borders a federal reservation of land that is owned by the Claimant.
31. 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.
32. 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 483 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. 483

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 240 and PAGE 241

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

SOURCE OF WATER: FOURMILE 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 91 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 663 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:

FOURMILE CREEK FROM SESW, SECTION 10, TOWNSHIP 36 SOUTH, RANGE 5 EAST, W.M., TO NENW, SECTION 17, TOWNSHIP 36 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