

**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 488

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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 488) 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. In a July 1, 1999 letter, OWRD requested clarification of Claim 488, in part, as follows: “According to your claim map, there are two separate reaches of the stream which are claimed, not one continuous reach. If, indeed, there is more than one claimed stream reach, *please provide a separate claim form for each individual stream reach being claimed as provided for in OAR 690-028-0027.*”
3. On August 3, 1999, the USFS timely amended Claim 488 as to rate of discharge of water for the lower and upper thresholds of flow, and place of use. Additionally, in response to OWRD’s request, the USFS divided Claim 488 by submitting an additional Statement and Proof of Claim that covered a portion of the original Claim 488. OWRD labeled this as Claim 709.
4. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 31 cfs to 19 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.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 488 was approved as amended on August 3, 1999.
6. On May 5, 2000, the Claimant, USFS timely filed Contest 2175 to the Claim and/or Preliminary Evaluation of Claim 488.
7. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 157 to the Claim and/or Preliminary Evaluation of Claim 488.
8. On May 1, 2000, Leonard Baio timely filed Contest 392 to the Claim and/or Preliminary Evaluation of Claim 488.
9. On May 2, 2000, Gary Strong timely filed Contest 627 to the Claim and/or Preliminary Evaluation of Claim 488.
10. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 862 to the Claim and/or Preliminary Evaluation of Claim 488.
11. On May 2, 2000, Robert Bartell timely filed Contest 1097 to the Claim and/or Preliminary Evaluation of Claim 488.
12. On May 2, 2000, Margaret Jacobs timely filed Contest 1332 to the Claim and/or Preliminary Evaluation of Claim 488.
13. On May 2, 2000, Carolyn Obenchain timely filed Contest 1566 to the Claim and/or Preliminary Evaluation of Claim 488.
14. On May 4, 2000, Rodney Z. James timely filed Contest 1915 to the Claim and/or Preliminary Evaluation of Claim 488.
15. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2367 to the Claim and/or Preliminary Evaluation of Claim 488.
16. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2604 to the Claim and/or Preliminary Evaluation of Claim 488.
17. On May 8, 2000, John Briggs timely filed Contest 4354 to the Claim and/or Preliminary Evaluation of Claim 488.
18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4589 to the Claim and/or Preliminary Evaluation of Claim 488.
19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4822 to the Claim and/or Preliminary Evaluation of Claim 488.

20. On May 8, 2000, Thomas William Mallams timely filed Contest 5065 to the Claim and/or Preliminary Evaluation of Claim 488.
21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5298 to the Claim and/or Preliminary Evaluation of Claim 488.
22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5531 to the Claim and/or Preliminary Evaluation of Claim 488.
23. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2917 to the Claim and/or Preliminary Evaluation of Claim 488.
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 010.
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 March 10, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2971. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (March. 10, 2003). Because there is no Contest 2971 to Claim 488, OWRD is viewing the contest number in the withdrawal as a scrivener's error, and treating WaterWatch as having withdrawn Contest 2917.
27. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTEST 2175 (Settlement Agreement) which resolved the remaining contest to Claim 488.
28. On April 2, 2003, the Adjudicator withdrew Case 010 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.
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 3 and 4, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Findings 3 and 4, 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 488 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 488**

**CLAIM MAP REFERENCE:** MYLAR FILED AS CLAIM # 377, PAGE 176

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

**SOURCE OF WATER:** MILLER CREEK, tributary to the WILLIAMSON RIVER

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

**RATE:** NATURAL FLOW FROM A TRIGGER FLOW OF 19 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 527 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:** JANUARY 25, 1907

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

MILLER CREEK FROM SWNE, SECTION 30, TOWNSHIP 27 SOUTH, RANGE 7 EAST, W.M., TO NWNE, SECTION 32, TOWNSHIP 27 SOUTH, RANGE 7 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