

**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 500

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 500) 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 Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
2. On August 3, 1999, the USFS timely amended Claim 500 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) as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim increased the natural flow limits from 14.0 cfs to 20.0 cfs for Jan.1 to Jan. 31; 33.0 cfs to 40.0 cfs for Mar. 1 to Mar.31; 33.0 cfs to 74 cfs for April 1 to April 30, May 1 to May 31, and June 1 to June 30; 15.0 cfs to 35.0 cfs for July 1 to July 31, 11.0 cfs to 30.0 cfs for Aug. 1 to Aug. 31, and Sept. 1 to Sept. 30; 13.0 cfs to 20.0 cfs for Oct. 1 to Oct. 31; 12.0 cfs to 20.0 cfs for Nov. 1 to Nov. 30; and 14.0 cfs to 20.0 cfs for Dec 1 to Dec 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 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 169 to the Claim and/or Preliminary Evaluation of Claim 500.
6. On May 1, 2000, Leonard Baio timely filed Contest 404 to the Claim and/or Preliminary Evaluation of Claim 500.
7. On May 2, 2000, Gary Strong timely filed Contest 639 to the Claim and/or Preliminary Evaluation of Claim 500.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 874 to the Claim and/or Preliminary Evaluation of Claim 500.
9. On May 2, 2000, Robert Bartell timely filed Contest 1109 to the Claim and/or Preliminary Evaluation of Claim 500.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1344 to the Claim and/or Preliminary Evaluation of Claim 500.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1578 to the Claim and/or Preliminary Evaluation of Claim 500.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1927 to the Claim and/or Preliminary Evaluation of Claim 500.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2379 to the Claim and/or Preliminary Evaluation of Claim 500.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2616 to the Claim and/or Preliminary Evaluation of Claim 500.
15. On May 8, 2000, John Briggs timely filed Contest 4366 to the Claim and/or Preliminary Evaluation of Claim 500.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4601 to the Claim and/or Preliminary Evaluation of Claim 500.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4834 to the Claim and/or Preliminary Evaluation of Claim 500.

18. On May 8, 2000, Thomas William Mallams timely filed Contest 5077 to the Claim and/or Preliminary Evaluation of Claim 500.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5310 to the Claim and/or Preliminary Evaluation of Claim 500.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5543 to the Claim and/or Preliminary Evaluation of Claim 500.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2929 to the Claim and/or Preliminary Evaluation of Claim 500.
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 002.
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 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 2929, the remaining contest to Claim 500. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On March 14, 2003, the Adjudicator withdrew Case 002 from the Office of Administrative Hearings.
26. Except as described in Finding of Fact 29, below, the place of use underlying Claim 500 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 FEDERAL RESERVED WATER RIGHTS, which are incorporated as if set forth fully herein, the date of reservation is the priority date of a federal reserved water right. This claim has a reservation date of October 28, 1988, and is based on Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. 100-577, 102 Stat. 2782 *et. seq.*
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.

29. The place of use for the right recognized by this claim is as follows: NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 15, TOWNSHIP 35 SOUTH, RANGE 16 EAST, W.M., TO NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.; EXCEPTING THE PORTIONS OF THE NORTH FORK SPRAGUE RIVER IN SW¹/₄NW¹/₄, SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, SECTION 20 AND NE¹/₄NW¹/₄, NW¹/₄NW¹/₄, SW¹/₄NW¹/₄, SECTION 33, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. Portions of the claimed reach are excluded, as described above, because they are neither within nor border a federal reservation of land, as is required by the federal reserved water right doctrine.

B. DETERMINATION

1. The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (“Act”) is a valid basis for this claim, including the claimed purpose of use. The Act established the national policy that certain rivers with outstanding values shall be preserved in free-flowing condition, and that they shall be protected for the benefit and enjoyment of present and future generations. 16 USC §§ 1271-1286, 1271. The Act’s purpose is to implement that policy through the creation of a National Wild and Scenic River system. 16 USC § 1272. The Act expressly reserves water for that purpose:

Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes.

16 USC § 1284(c). The Forest Service is entitled to a reserved right for the amount of water necessary to accomplish the purposes for which each wild and scenic reach was created. *See In Re SRBA*, Wild & Scenic River Claims, Consolidated Subcase 75-13316, at 8-11 (Idaho Dist. Ct., July 27, 1998) (memorandum decision granting, in part, and denying, in part, the United States’ motion for summary judgment on reserved water rights claims).

2. The GENERAL CONCLUSIONS OF LAW CONCERNING FEDERAL RESERVED WATER RIGHTS are incorporated as if set forth fully herein.
3. 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.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
5. 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.

6. Based on the file and record herein, IT IS ORDERED that Claim 500 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 500

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGES 227, 228, 238 and 239

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

SOURCE OF WATER:

The NORTH FORK SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE: INSTREAM FLOW

RATES:

NATURAL FLOW FROM A TRIGGER FLOW OF 74 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 957 CFS, AND AS SET FORTH IN THE TABLE BELOW:

Period of Use:	When the Natural Flow is Less than 74 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Jan 1 to Jan 31	20.0
Feb 1 to Feb 28/29	20.0
Mar 1 to Mar 30	40.0
Apr 1 to Apr 30	74.0
May 1 to May 31	74.0
June 1 to June 30	74.0
July 1 to July 31	35.0
Aug 1 to Aug 31	30.0
Sept 1 to Sept 30	30.0
Oct 1 to Oct 31	20.0
Nov 1 to Nov 30	20.0
Dec 1 to Dec 31	20.0

INSREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE STREAM REACH.

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 – DECEMBER 31

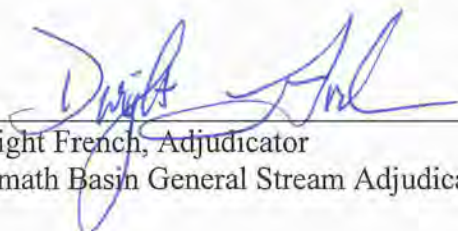
DATE OF PRIORITY: OCTOBER 28, 1988

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 15, TOWNSHIP 35 SOUTH, RANGE 16 EAST, W.M., TO NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.; EXCEPTING THE PORTIONS OF THE NORTH FORK SPRAGUE RIVER IN SW¹/₄NW¹/₄, SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, SECTION 20 AND NE¹/₄NW¹/₄, NW¹/₄NW¹/₄, SW¹/₄NW¹/₄, SECTION 33, TOWNSHIP 34 SOUTH, RANGE 16 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