

**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 502

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 502) 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 502 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 0.0 cfs to 5.8 cfs for Aug.1 to Aug. 31 and Sept. 1 to Sept. 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. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 287 cfs to 281 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 the claim was approved as amended on August 3, 1999.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 171 to the Claim and/or Preliminary Evaluation of Claim 502.
7. On May 1, 2000, Leonard Baio timely filed Contest 406 to the Claim and/or Preliminary Evaluation of Claim 502.
8. On May 2, 2000, Gary Strong timely filed Contest 641 to the Claim and/or Preliminary Evaluation of Claim 502.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 876 to the Claim and/or Preliminary Evaluation of Claim 502.
10. On May 2, 2000, Robert Bartell timely filed Contest 1111 to the Claim and/or Preliminary Evaluation of Claim 502.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1346 to the Claim and/or Preliminary Evaluation of Claim 502.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1580 to the Claim and/or Preliminary Evaluation of Claim 502.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1929 to the Claim and/or Preliminary Evaluation of Claim 502.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2381 to the Claim and/or Preliminary Evaluation of Claim 502.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2618 to the Claim and/or Preliminary Evaluation of Claim 502.
16. On May 8, 2000, John Briggs timely filed Contest 4368 to the Claim and/or Preliminary Evaluation of Claim 502.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4603 to the Claim and/or Preliminary Evaluation of Claim 502.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4836 to the Claim and/or Preliminary Evaluation of Claim 502.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5079 to the Claim and/or Preliminary Evaluation of Claim 502.

20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5312 to the Claim and/or Preliminary Evaluation of Claim 502.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5545 to the Claim and/or Preliminary Evaluation of Claim 502.
22. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2931 to the Claim and/or Preliminary Evaluation of Claim 502.
23. On May 8, 2000, J. R. Simplot as Trustee of the J. R. Simplot Self-Declaration of Revocable Trust timely filed Contest 2771 to the Claim and/or Preliminary Evaluation of Claim 502.
24. On May 8, 2000, The Nature Conservancy timely filed Contest 2803 to the Claim and/or Preliminary Evaluation of Claim 502.
25. 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.
26. On June 5, 2001, J. R. Simplot as Trustee of the J. R. Simplot Self-Declaration of Revocable Trust withdrew without prejudice Contest 2771. *See* J. R. SIMPLOT, TRUSTEE OF THE J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, MOTION TO WITHDRAW FROM CONTESTS RELATED TO CLAIM NOS. 500, 502 AND 502 (June. 5, 2001).
27. On February 11, 2002, The Nature Conservancy's Contest 2803 was dismissed. *See* ORDER TO DISMISS CONTEST NOS. 2803, 2804, 2805, 2806 AND REFERRED TO THE ADJUDICATOR FOR FINAL DISPOSITION (Feb. 11, 2002).
28. 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).
29. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2931, the remaining contest to Claim 502. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
30. On March 14, 2003, the Adjudicator withdrew Case 002 from the Office of Administrative Hearings.

31. Except as described in Finding of Fact 34, below, the place of use underlying Claim 502 is within or borders a federal reservation of land that is owned by the Claimant.
32. 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.*
33. 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.
34. The place of use for the right recognized by this claim is as follows: SYCAN RIVER FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 31, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M.; EXCEPTING THE PORTIONS OF SYCAN RIVER IN SECTION 30, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M, AND W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SECTION 1, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M., AND SW $\frac{1}{4}$, SECTION 19, TOWNSHIP 34 SOUTH, RANGE 12 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 502 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 502

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGES 212, 213, 223, and 224

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

SOURCE OF WATER:

The SYCAN RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: INSTREAM FLOW

RATES:

NATURAL FLOW FROM A TRIGGER FLOW OF 281 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 3552 CFS, AND AS SET FORTH IN THE TABLE BELOW:

Period of Use:	When the Natural Flow is Less than 281 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Jan 1 to Jan 31	17.0
Feb 1 to Feb 28/29	33.0
Mar 1 to Mar 30	61.0
Apr 1 to Apr 30	230.0
May 1 to May 31	230.0
June 1 to June 30	70.0
July 1 to July 31	5.8

Period of Use:	When the Natural Flow is Less than 281 CFS, Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
Aug 1 to Aug 31	5.8
Sept 1 to Sept 30	5.8
Oct 1 to Oct 31	6.9
Nov 1 to Nov 30	6.1
Dec 1 to Dec 31	6.6

INSTREAM FLOWS 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

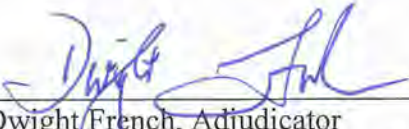
DATE OF PRIORITY: OCTOBER 28, 1988

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 31, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M.; EXCEPTING THE PORTIONS OF SYCAN RIVER IN SECTION 30, TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M, AND W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SECTION 1, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M., AND SW $\frac{1}{4}$, SECTION 19, TOWNSHIP 34 SOUTH, RANGE 12 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