

**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 506

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 506) 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 506 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 as amended on August 3, 1999.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 175 to the Claim and/or Preliminary Evaluation of Claim 506.
5. On May 1, 2000, Leonard Baio timely filed Contest 410 to the Claim and/or Preliminary Evaluation of Claim 506.
6. On May 2, 2000, Gary Strong timely filed Contest 645 to the Claim and/or Preliminary Evaluation of Claim 506.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 880 to the Claim and/or Preliminary Evaluation of Claim 506.

8. On May 2, 2000, Robert Bartell timely filed Contest 1115 to the Claim and/or Preliminary Evaluation of Claim 506.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1350 to the Claim and/or Preliminary Evaluation of Claim 506.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1584 to the Claim and/or Preliminary Evaluation of Claim 506.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1933 to the Claim and/or Preliminary Evaluation of Claim 506.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2385 to the Claim and/or Preliminary Evaluation of Claim 506.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2622 to the Claim and/or Preliminary Evaluation of Claim 506.
14. On May 8, 2000, John Briggs timely filed Contest 4372 to the Claim and/or Preliminary Evaluation of Claim 506.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4607 to the Claim and/or Preliminary Evaluation of Claim 506.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4840 to the Claim and/or Preliminary Evaluation of Claim 506.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5083 to the Claim and/or Preliminary Evaluation of Claim 506.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5316 to the Claim and/or Preliminary Evaluation of Claim 506.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5549 to the Claim and/or Preliminary Evaluation of Claim 506.
20. 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.
21. 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. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL*'S CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).

22. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
23. The place of use underlying Claim 506 is within or borders a federal reservation of land that is owned by the Claimant.
24. 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 April 15, 1961, and is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961),
25. 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 506 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 506

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 195

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

SOURCE OF WATER: COYOTE CREEK, tributary to the SYCAN RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 6.6 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 190 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 15, 1961

THE PLACE OF USE IS LOCATED AS FOLLOWS:

COYOTE CREEK FROM NWNW, SECTION 21, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M., TO SWNE, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 13 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