

**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 509

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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 509) 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 509 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 reduced the lower threshold for natural flow from 8.2 cfs to 5.5 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.
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 178 to the Claim and/or Preliminary Evaluation of Claim 509.

6. On May 1, 2000, Leonard Baio timely filed Contest 413 to the Claim and/or Preliminary Evaluation of Claim 509.
7. On May 2, 2000, Gary Strong timely filed Contest 648 to the Claim and/or Preliminary Evaluation of Claim 509.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 883 to the Claim and/or Preliminary Evaluation of Claim 509.
9. On May 2, 2000, Robert Bartell timely filed Contest 1118 to the Claim and/or Preliminary Evaluation of Claim 509.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1353 to the Claim and/or Preliminary Evaluation of Claim 509.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1587 to the Claim and/or Preliminary Evaluation of Claim 509.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1936 to the Claim and/or Preliminary Evaluation of Claim 509.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2388 to the Claim and/or Preliminary Evaluation of Claim 509.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2625 to the Claim and/or Preliminary Evaluation of Claim 509.
15. On May 8, 2000, John Briggs timely filed Contest 4375 to the Claim and/or Preliminary Evaluation of Claim 509.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4610 to the Claim and/or Preliminary Evaluation of Claim 509.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4843 to the Claim and/or Preliminary Evaluation of Claim 509.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5086 to the Claim and/or Preliminary Evaluation of Claim 509.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5319 to the Claim and/or Preliminary Evaluation of Claim 509.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5552 to the Claim and/or Preliminary Evaluation of Claim 509.

21. 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.
22. 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).
23. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
24. The place of use underlying Claim 509 is within or borders a federal reservation of land that is owned by the Claimant.
25. 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 August 21, 1906, and is based on a Presidential Proclamation of August 21, 1906.
26. 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. 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 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.

5. Based on the file and record herein, IT IS ORDERED that Claim 509 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 509**

**CLAIM MAP REFERENCE:** MYLAR FILED AS CLAIM # 377, PAGE 247

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

**SOURCE OF WATER:** DEMING CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

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

**RATE:** NATURAL FLOW FROM A TRIGGER FLOW OF 5.5 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 182 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

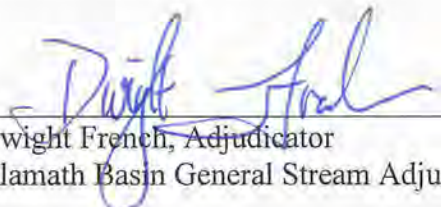
**DATE OF PRIORITY:** AUGUST 21, 1906

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

DEMING CREEK FROM NWN, SECTION 1, TOWNSHIP 36 SOUTH, RANGE 15 EAST, W.M., TO SESE, SECTION 9, TOWNSHIP 36 SOUTH, RANGE 15 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