

**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 513

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 513) 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. §§ 473-478, 479-482 and 551 (Organic Act).
2. On August 3, 1999, the USFS timely amended Claim 513 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) “[f]urther analysis of fire records showed that numerous wildfires occur during the month of May, so the claim was amended to include that month.”
3. The August 3, 1999 amendment to the original claim changed the period of use from June 1 through November 15 to May 1 through November 15, and increased the natural flow limits from 3.5 cfs to 8.3 cfs for June 1 to June 30, 1.6 cfs to 3.7 cfs for July 1 to July 31, 1.1 cfs to 1.3 cfs for Aug. 1 to Aug. 31, 0.7 cfs to 1.2 cfs for Sept. 1 to Sept. 30, 1.0 cfs to 2.2 cfs for Oct. 1 to Oct. 31, and 1.0 cfs to 2.1 cfs for Nov. 1 to Nov. 15. 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 5, 2000, the Claimant, USFS, timely filed Contest 2190 to the Preliminary Evaluation of Claim 513.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 182 to the Claim and/or Preliminary Evaluation of Claim 513.
7. On May 1, 2000, Leonard Baio timely filed Contest 417 to the Claim and/or Preliminary Evaluation of Claim 513.
8. On May 2, 2000, Gary Strong timely filed Contest 652 to the Claim and/or Preliminary Evaluation of Claim 513.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 887 to the Claim and/or Preliminary Evaluation of Claim 513.
10. On May 2, 2000, Robert Bartell timely filed Contest 1122 to the Claim and/or Preliminary Evaluation of Claim 513.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1357 to the Claim and/or Preliminary Evaluation of Claim 513.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1591 to the Claim and/or Preliminary Evaluation of Claim 513.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1940 to the Claim and/or Preliminary Evaluation of Claim 513.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2392 to the Claim and/or Preliminary Evaluation of Claim 513.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2629 to the Claim and/or Preliminary Evaluation of Claim 513.
16. On May 8, 2000, John Briggs timely filed Contest 4379 to the Claim and/or Preliminary Evaluation of Claim 513.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4614 to the Claim and/or Preliminary Evaluation of Claim 513.

18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4847 to the Claim and/or Preliminary Evaluation of Claim 513.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5090 to the Claim and/or Preliminary Evaluation of Claim 513.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5323 to the Claim and/or Preliminary Evaluation of Claim 513.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5556 to the Claim and/or Preliminary Evaluation of Claim 513.
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 009.
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, 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).
24. On December 31, 2002, the USFS amended the priority date of Claim 513 "from October 14, 1935 as originally claimed to March 1, 1985."
25. On March 18, 2003, the OWRD and USFS executed STIPULATION TO RESOLVE CONTESTS 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2177, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, AND 2253 (Settlement Agreement) which resolved the remaining contest (Contest 2190) to Claim 513.
26. On April 2, 2003, the Adjudicator withdrew Case 009 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, with the exception that the priority date is changed to March 1, 1985 as set forth in the USFS's amended claim dated December 31, 2002.
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. 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 513 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 513

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 255 and PAGE 261

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

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

PURPOSE OR USE:

INSTREAM USE TO MAINTAIN A NATURAL FIRE BREAK AND SOURCE OF WATER FOR FOREST FIRE CONTROL

PERIODS OF ALLOWED USE AND RATES:

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 Use:	Natural Flow is Limited to Not More than the Following Rates in Cubic Feet per Second (CFS):
May 1 to May 31	16.0
June 1 to June 30	8.3
July 1 to July 31	3.7
Aug 1 to Aug 31	1.3
Sept 1 to Sept 30	1.2
Oct 1 to Oct 31	2.2

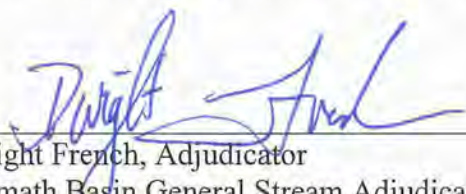
DATE OF PRIORITY: MARCH 1, 1985

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FISHHOLE CREEK FROM NESW, SECTION 4, TOWNSHIP 38 SOUTH, RANGE 15 EAST, W.M., TO SENW, SECTION 32, TOWNSHIP 37 SOUTH, RANGE 15 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