

**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 515

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 515) 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 515 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.
4. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 184 to the Claim and/or Preliminary Evaluation of Claim 515.
5. On May 1, 2000, Leonard Baio timely filed Contest 419 to the Claim and/or Preliminary Evaluation of Claim 515.
6. On May 2, 2000, Gary Strong timely filed Contest 654 to the Claim and/or Preliminary Evaluation of Claim 515.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 889 to the Claim and/or Preliminary Evaluation of Claim 515.

8. On May 2, 2000, Robert Bartell timely filed Contest 1124 to the Claim and/or Preliminary Evaluation of Claim 515.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1359 to the Claim and/or Preliminary Evaluation of Claim 515.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1593 to the Claim and/or Preliminary Evaluation of Claim 515.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1942 to the Claim and/or Preliminary Evaluation of Claim 515.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2394 to the Claim and/or Preliminary Evaluation of Claim 515.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2631 to the Claim and/or Preliminary Evaluation of Claim 515.
14. On May 8, 2000, John Briggs timely filed Contest 4381 to the Claim and/or Preliminary Evaluation of Claim 515.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4616 to the Claim and/or Preliminary Evaluation of Claim 515.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4849 to the Claim and/or Preliminary Evaluation of Claim 515.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5092 to the Claim and/or Preliminary Evaluation of Claim 515.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5325 to the Claim and/or Preliminary Evaluation of Claim 515.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5558 to the Claim and/or Preliminary Evaluation of Claim 515.
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 and Ethel 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 515 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. The Claimant stated that 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). OWRD finds that in addition to the reservation date of April 15, 1961, that the portion of Claim 515 located in the NORTH ½ and the NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M has a reservation date of July 26, 1961, and is based on Presidential Proclamation No. 3423, July 26, 1961, 26 Fed. Reg. 6799 (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 515 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 515

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 236

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

SOURCE OF WATER: FIVEMILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 62 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 338 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

DATES OF PRIORITY:

APRIL 15, 1961 – FIVEMILE CREEK FROM NENW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SOUTH BOUNDARY OF SESW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.; AND

FIVEMILE CREEK FROM NORTH BOUNDARY OF SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

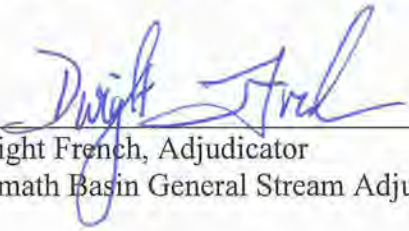
JULY 26, 1961 – FIVEMILE CREEK FROM NORTH BOUNDARY OF NENW, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SOUTH BOUNDARY OF NWSE, SECTION 24, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

FIVEMILE CREEK FROM NENW, SECTION 13, TOWNSHIP 35 SOUTH, RANGE 13 EAST, W.M., TO SWSE, SECTION 24, TOWNSHIP 35 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