

**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 521 |

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 521) 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 521 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 190 to the Claim and/or Preliminary Evaluation of Claim 521.
5. On May 1, 2000, Leonard Baio timely filed Contest 425 to the Claim and/or Preliminary Evaluation of Claim 521.
6. On May 2, 2000, Gary Strong timely filed Contest 660 to the Claim and/or Preliminary Evaluation of Claim 521.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 895 to the Claim and/or Preliminary Evaluation of Claim 521.

8. On May 2, 2000, Robert Bartell timely filed Contest 1130 to the Claim and/or Preliminary Evaluation of Claim 521.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1365 to the Claim and/or Preliminary Evaluation of Claim 521.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1599 to the Claim and/or Preliminary Evaluation of Claim 521.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1948 to the Claim and/or Preliminary Evaluation of Claim 521.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2400 to the Claim and/or Preliminary Evaluation of Claim 521.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2637 to the Claim and/or Preliminary Evaluation of Claim 521.
14. On May 8, 2000, John Briggs timely filed Contest 4387 to the Claim and/or Preliminary Evaluation of Claim 521.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4622 to the Claim and/or Preliminary Evaluation of Claim 521.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4855 to the Claim and/or Preliminary Evaluation of Claim 521.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5098 to the Claim and/or Preliminary Evaluation of Claim 521.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5331 to the Claim and/or Preliminary Evaluation of Claim 521.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5564 to the Claim and/or Preliminary Evaluation of Claim 521.
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 521 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.
26. Identical copies of a separate map titled "Land Status for Long Creek Instream Flow Reaches" ("Land Status Map") can be found within both Claims 518 and 521 (*see* Claim 518, Page 97-542-0026, and Claim 521, Page 97-545-0026). This Land Status Map shows an "Upper Reach" and a "Lower Reach." According to this map the "Upper Reach" ends where the "Lower Reach" begins. Claim 518 (Page 97-542-0006) states the "Upper Reach" ends in SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, WM., and has a reservation date of September 17, 1906. Claim 521 (Page 97-545-0006) states the "Lower Reach" begins in SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, WM., and has a reservation date of April 15, 1961. Contrarily, the Land Status Map shows the "Lower Reach" beginning in Section 32 slightly north of Section 5. The Land Status Map is consistent with the USFS Mylar claim map submitted to OWRD on October 14, 1999 (Claim Map Reference – Mylar filed as Claim #377, Page 188). However, Section 32 is not included in the April 15, 1961 Proclamation Taking Title to Certain Lands, but is included in the Presidential Proclamation of September 17, 1906. Therefore, OWRD finds the instream reach for Claim 518 ends at the south boundary line of SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, WM and the instream reach for Claim 521 begins at the north boundary line of NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, WM.

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 521 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 521

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 194

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

SOURCE OF WATER: LONG 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 25 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 333 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

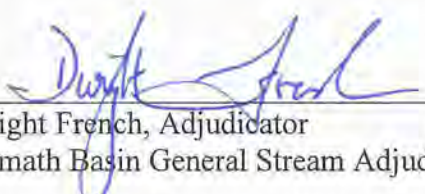
DATE OF PRIORITY: April 15, 1961

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LONG CREEK FROM NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., TO SWSE, SECTION 5, TOWNSHIP 31 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