

**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 522

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 522) 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 522 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 33.0 cfs to 39.0 cfs for June 1 to June 30, 12.0 cfs to 15.0 cfs for July 1 to July 31, 9.4 cfs to 11.0 cfs for Aug. 1 to Aug. 31, 7.2 cfs to 9.3 cfs for Oct. 1 to Oct. 31, and 6.8 cfs to 8.1 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 2196 to the Preliminary Evaluation of Claim 522.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 191 to the Claim and/or Preliminary Evaluation of Claim 522.
7. On May 1, 2000, Leonard Baio timely filed Contest 426 to the Claim and/or Preliminary Evaluation of Claim 522.
8. On May 2, 2000, Gary Strong timely filed Contest 661 to the Claim and/or Preliminary Evaluation of Claim 522.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 896 to the Claim and/or Preliminary Evaluation of Claim 522.
10. On May 2, 2000, Robert Bartell timely filed Contest 1131 to the Claim and/or Preliminary Evaluation of Claim 522.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1366 to the Claim and/or Preliminary Evaluation of Claim 522.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1600 to the Claim and/or Preliminary Evaluation of Claim 522.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1949 to the Claim and/or Preliminary Evaluation of Claim 522.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2401 to the Claim and/or Preliminary Evaluation of Claim 522.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2638 to the Claim and/or Preliminary Evaluation of Claim 522.
16. On May 8, 2000, John Briggs timely filed Contest 4388 to the Claim and/or Preliminary Evaluation of Claim 522.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4623 to the Claim and/or Preliminary Evaluation of Claim 522.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4856 to the Claim and/or Preliminary Evaluation of Claim 522.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5099 to the Claim and/or Preliminary Evaluation of Claim 522.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5332 to the Claim and/or Preliminary Evaluation of Claim 522.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5565 to the Claim and/or Preliminary Evaluation of Claim 522.
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 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 2196) to Claim 522.
25. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
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 519 and 522 (*see* Claim 519, Page 97-543-0023, and Claim 522, Page 97-546-0023). 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 519 (Page 97-543-0006) states the "Upper Reach" ends in SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M., and has a reservation date of September 17, 1906. Claim 522 (Page 97-546-0006) states the "Lower Reach" begins in SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., 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 519 ends at the south boundary line of SESE, SECTION 32, TOWNSHIP 30 SOUTH, RANGE 12 EAST, W.M. and the instream reach for Claim 522 begins at the north boundary line of NENE, SECTION 5, TOWNSHIP 31 SOUTH, RANGE 12 EAST, W.M., which is consistent with the Preliminary Evaluation and the Settlement Agreement.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and 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. 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 522 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 522

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 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	30.0
June 1 to June 30	39.0
July 1 to July 31	15.0
Aug 1 to Aug 31	11.0
Sept 1 to Sept 30	8.5
Oct 1 to Oct 31	9.3


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