

**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 524

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 524) 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 524 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 193 to the Claim and/or Preliminary Evaluation of Claim 524.
5. On May 1, 2000, Leonard Baio timely filed Contest 428 to the Claim and/or Preliminary Evaluation of Claim 524.
6. On May 2, 2000, Gary Strong timely filed Contest 663 to the Claim and/or Preliminary Evaluation of Claim 524.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 898 to the Claim and/or Preliminary Evaluation of Claim 524.

8. On May 2, 2000, Robert Bartell timely filed Contest 1133 to the Claim and/or Preliminary Evaluation of Claim 524.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1368 to the Claim and/or Preliminary Evaluation of Claim 524.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1602 to the Claim and/or Preliminary Evaluation of Claim 524.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1951 to the Claim and/or Preliminary Evaluation of Claim 524.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2403 to the Claim and/or Preliminary Evaluation of Claim 524.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2640 to the Claim and/or Preliminary Evaluation of Claim 524.
14. On May 8, 2000, John Briggs timely filed Contest 4390 to the Claim and/or Preliminary Evaluation of Claim 524.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4625 to the Claim and/or Preliminary Evaluation of Claim 524.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4858 to the Claim and/or Preliminary Evaluation of Claim 524.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5101 to the Claim and/or Preliminary Evaluation of Claim 524.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5334 to the Claim and/or Preliminary Evaluation of Claim 524.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5567 to the Claim and/or Preliminary Evaluation of Claim 524.
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 524 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 October 14, 1935 and is based on Presidential Proclamation No. 2143, October 14, 1935.
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 524 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 524

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 238

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

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

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 115 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 1624 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

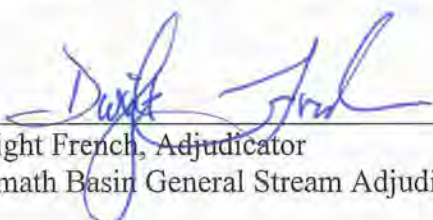
DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SESW, SECTION 30, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., TO SWSW, SECTION 30, TOWNSHIP 35 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