

**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 528

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 528) 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 528 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 69.0 cfs to 82.0 cfs for June 1 to June 30, 15.0 cfs to 35.0 cfs for July 1 to July 31, 11.0 cfs to 29.0 cfs for Aug. 1 to Aug. 31, 11.0 cfs to 30.0 cfs for Sept. 1 to Sept. 30, 13.0 cfs to 33.0 cfs for Oct. 1 to Oct. 31, and 12.0 cfs to 40.0 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 2200 to the Preliminary Evaluation of Claim 528.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 197 to the Claim and/or Preliminary Evaluation of Claim 528.
7. On May 1, 2000, Leonard Baio timely filed Contest 432 to the Claim and/or Preliminary Evaluation of Claim 528.
8. On May 2, 2000, Gary Strong timely filed Contest 667 to the Claim and/or Preliminary Evaluation of Claim 528.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 902 to the Claim and/or Preliminary Evaluation of Claim 528.
10. On May 2, 2000, Robert Bartell timely filed Contest 1137 to the Claim and/or Preliminary Evaluation of Claim 528.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1372 to the Claim and/or Preliminary Evaluation of Claim 528.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1606 to the Claim and/or Preliminary Evaluation of Claim 528.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1955 to the Claim and/or Preliminary Evaluation of Claim 528.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2407 to the Claim and/or Preliminary Evaluation of Claim 528.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2644 to the Claim and/or Preliminary Evaluation of Claim 528.
16. On May 8, 2000, John Briggs timely filed Contest 4394 to the Claim and/or Preliminary Evaluation of Claim 528.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4629 to the Claim and/or Preliminary Evaluation of Claim 528.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4862 to the Claim and/or Preliminary Evaluation of Claim 528.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5105 to the Claim and/or Preliminary Evaluation of Claim 528.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5338 to the Claim and/or Preliminary Evaluation of Claim 528.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5571 to the Claim and/or Preliminary Evaluation of Claim 528.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2942 to the Claim and/or Preliminary Evaluation of Claim 528.
23. 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.
24. 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).
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2942. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. 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 2200) to Claim 528.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
28. The beginning and end of the Instream Flow Reach for Claim 528, and the end of the Instream Flow Reach for Claim 530 are not shown on the USFS Mylar map that was submitted on October 14, 1999 (CLAIM MAP REFERENCE: OWRD # CLAIM 377, PAGE 238). Identical copies of a map titled "Land Status for North Fork of the Sprague River at Sandhill Crossing Instream Flow Claim" ("Land Status Map") can be found within both Claims 528 and 530 (*see* Claim 528, Page 97-552-0023, and Claim 530, Page 97-554-0023). This Land Status Map shows a "Lower Reach" and an "Upper Reach" as follows:

- a. The “Lower Reach” is from NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. to NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of October 14, 1935.
- b. The” Upper Reach” is from SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M. to SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of August 21, 1906.

It is apparent from the particulars of Claim 528, in which Item 8 describes the “Lower Reach,” and Item 5 shows a reservation date based on October 14, 1935 (Page 97-552-0006), and from the particulars of Claim 530, in which Item 8 describes the “Upper Reach” and Item 5 shows a reservation date based on August 21, 1906 (*see* Page 97-554-0006), that the Instream Flow Reach for Claim 528 begins at the east boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. and ends at the west boundary line of the NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M. The Instream Flow Reach for Claim 530 ends at the west boundary line of the SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 528

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 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	181.0
June 1 to June 30	82.0
July 1 to July 31	35.0
Aug 1 to Aug 31	29.0
Sept 1 to Sept 30	30.0
Oct 1 to Oct 31	33.0


DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM NESW, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M., TO NESW, SECTION 11, 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