

**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 529

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 529) 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 529 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 198 to the Claim and/or Preliminary Evaluation of Claim 529.
5. On May 1, 2000, Leonard Baio timely filed Contest 433 to the Claim and/or Preliminary Evaluation of Claim 529.
6. On May 2, 2000, Gary Strong timely filed Contest 668 to the Claim and/or Preliminary Evaluation of Claim 529.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 903 to the Claim and/or Preliminary Evaluation of Claim 529.

8. On May 2, 2000, Robert Bartell timely filed Contest 1138 to the Claim and/or Preliminary Evaluation of Claim 529.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1373 to the Claim and/or Preliminary Evaluation of Claim 529.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1607 to the Claim and/or Preliminary Evaluation of Claim 529.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1956 to the Claim and/or Preliminary Evaluation of Claim 529.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2408 to the Claim and/or Preliminary Evaluation of Claim 529.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2645 to the Claim and/or Preliminary Evaluation of Claim 529.
14. On May 8, 2000, John Briggs timely filed Contest 4395 to the Claim and/or Preliminary Evaluation of Claim 529.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4630 to the Claim and/or Preliminary Evaluation of Claim 529.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4863 to the Claim and/or Preliminary Evaluation of Claim 529.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5106 to the Claim and/or Preliminary Evaluation of Claim 529.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5339 to the Claim and/or Preliminary Evaluation of Claim 529.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5572 to the Claim and/or Preliminary Evaluation of Claim 529.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2943 to the Claim and/or Preliminary Evaluation of Claim 529.
21. 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.
22. 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).

23. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2943, the remaining contest to Claim 529. *See* WATER WATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 529 is within or borders a federal reservation of land that is owned by the Claimant.
26. 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 August 21, 1906, and is based on a Presidential Proclamation of August 21, 1906.
27. 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.
28. The beginning and end of the Instream Flow Reach for Claim 527, and the end of the Instream Flow Reach for Claim 529 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 separate 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 527 and 529 (*see* Claim 527, Page 97-551-0026, and Claim 529, Page 97-553-0026). 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 527, in which Item 8 describes the "Lower Reach," and Item 5 shows a reservation date based on October 14, 1935 (Page 97-551-0006), and from the particulars of Claim 529, in which Item 8 describes the "Upper Reach" and Item 5 shows a reservation date based on August 21, 1906 (*see* Page 97-553-0006), that the Instream Flow Reach for Claim 527 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 529 ends at the west boundary line of the SWNE, SECTION 11, TOWNSHIP 35 SOUTH, RANGE 15 EAST, W.M.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 529

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 228 and 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 74 CUBIC FEET PER SECOND (CFS) TO A CAP FLOWS OF 957 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

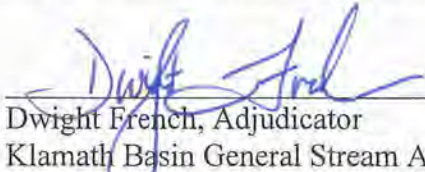
DATE OF PRIORITY: AUGUST 21, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NORTH FORK SPRAGUE RIVER FROM SWSW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 16 EAST, W.M., TO SWNE, 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

PARTIAL ORDER OF DETERMINATION

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