

**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 532

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 532) 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 532 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 55 cfs to 53 cfs. 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 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 201 to the Claim and/or Preliminary Evaluation of Claim 532.
6. On May 1, 2000, Leonard Baio timely filed Contest 436 to the Claim and/or Preliminary Evaluation of Claim 532.

7. On May 2, 2000, Gary Strong timely filed Contest 671 to the Claim and/or Preliminary Evaluation of Claim 532.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 906 to the Claim and/or Preliminary Evaluation of Claim 532.
9. On May 2, 2000, Robert Bartell timely filed Contest 1141 to the Claim and/or Preliminary Evaluation of Claim 532.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 4478 to the Claim and/or Preliminary Evaluation of Claim 532.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1610 to the Claim and/or Preliminary Evaluation of Claim 532.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1959 to the Claim and/or Preliminary Evaluation of Claim 532.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2411 to the Claim and/or Preliminary Evaluation of Claim 532.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2648 to the Claim and/or Preliminary Evaluation of Claim 532.
15. On May 8, 2000, John Briggs timely filed Contest 4398 to the Claim and/or Preliminary Evaluation of Claim 532.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4633 to the Claim and/or Preliminary Evaluation of Claim 532.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4866 to the Claim and/or Preliminary Evaluation of Claim 532.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5109 to the Claim and/or Preliminary Evaluation of Claim 532.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5342 to the Claim and/or Preliminary Evaluation of Claim 532.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5575 to the Claim and/or Preliminary Evaluation of Claim 532.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2946 to the Claim and/or Preliminary Evaluation of Claim 532.

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 010.
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 February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2946, the remaining contest to Claim 532. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 532 is within or borders a federal reservation of land that is owned by the Claimant.
27. 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 unless the claimant amended the priority date to a later date. This claim contains two reservation dates as follows: (1) the reservation date of August 21, 1906 is based on a Presidential Proclamation of August 21, 1906, and (2) the reservation date of September 17, 1906 is based on the Presidential Proclamation of September 17, 1906.
28. 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.
29. The USFS's Claim 532 states that lower end of the instream reach of Paradise Creek is located in the SWNE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.; however, the USFS claim map (OWRD Reference # Claim 377, Page 215) shows that lower end of the reach of this claim is where Paradise Creek flows into the Sycan River, and is located in the NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. Therefore, OWRD finds that the end of the instream reach for this claim is PARADISE CREEK, NESE, SECTION 22, TOWNSHIP 33 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. The end of the instream reach for this claim is PARADISE CREEK, NESE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
5. 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 532 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 532

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 215 and PAGE 227

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

SOURCE OF WATER: PARADISE 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 53 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 630 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: SEPTEMBER 17, 1906

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PARADISE CREEK FROM SENW, SECTION 11, TOWNSHIP 34 SOUTH, RANGE 15 EAST, W.M., TO NESE, SECTION 22, TOWNSHIP 33 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