

**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 538

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 538) 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 538 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 207 to the Claim and/or Preliminary Evaluation of Claim 538.
5. On May 1, 2000, Leonard Baio timely filed Contest 442 to the Claim and/or Preliminary Evaluation of Claim 538.
6. On May 2, 2000, Gary Strong timely filed Contest 677 to the Claim and/or Preliminary Evaluation of Claim 538.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 912 to the Claim and/or Preliminary Evaluation of Claim 538.

8. On May 2, 2000, Robert Bartell timely filed Contest 1147 to the Claim and/or Preliminary Evaluation of Claim 538.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1381 to the Claim and/or Preliminary Evaluation of Claim 538.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1616 to the Claim and/or Preliminary Evaluation of Claim 538.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1965 to the Claim and/or Preliminary Evaluation of Claim 538.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2417 to the Claim and/or Preliminary Evaluation of Claim 538.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2654 to the Claim and/or Preliminary Evaluation of Claim 538.
14. On May 8, 2000, John Briggs timely filed Contest 4404 to the Claim and/or Preliminary Evaluation of Claim 538.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4639 to the Claim and/or Preliminary Evaluation of Claim 538.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4872 to the Claim and/or Preliminary Evaluation of Claim 538.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5115 to the Claim and/or Preliminary Evaluation of Claim 538.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5348 to the Claim and/or Preliminary Evaluation of Claim 538.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5581 to the Claim and/or Preliminary Evaluation of Claim 538.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2952 to the Claim and/or Preliminary Evaluation of Claim 538.
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 2952, the remaining contest to Claim 538. *See* WATERWATCH'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 538 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 January 25, 1907 and is based on a Presidential Proclamation of January 25, 1907.
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.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 538

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 189 and PAGE 190

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

SOURCE OF WATER: SAND CREEK, tributary to the WILLIAMSON RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 33 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 600 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

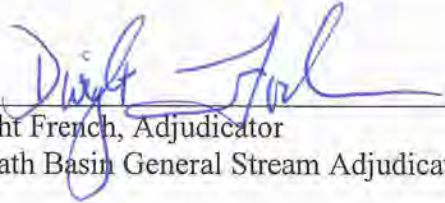
DATE OF PRIORITY: JANUARY 25, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SAND CREEK FROM SWNE, SECTION 35, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 31, TOWNSHIP 31 SOUTH, RANGE 7 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