

**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 541

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 541) 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 541 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 21 cfs to 14 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 210 to the Claim and/or Preliminary Evaluation of Claim 541.

6. On May 1, 2000, Leonard Baio timely filed Contest 445 to the Claim and/or Preliminary Evaluation of Claim 541.
7. On May 2, 2000, Gary Strong timely filed Contest 680 to the Claim and/or Preliminary Evaluation of Claim 541.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 915 to the Claim and/or Preliminary Evaluation of Claim 541.
9. On May 2, 2000, Robert Bartell timely filed Contest 1150 to the Claim and/or Preliminary Evaluation of Claim 541.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1384 to the Claim and/or Preliminary Evaluation of Claim 541.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1619 to the Claim and/or Preliminary Evaluation of Claim 541.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1968 to the Claim and/or Preliminary Evaluation of Claim 541.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2420 to the Claim and/or Preliminary Evaluation of Claim 541.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2657 to the Claim and/or Preliminary Evaluation of Claim 541.
15. On May 8, 2000, John Briggs timely filed Contest 4407 to the Claim and/or Preliminary Evaluation of Claim 541.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4642 to the Claim and/or Preliminary Evaluation of Claim 541.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4875 to the Claim and/or Preliminary Evaluation of Claim 541.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5118 to the Claim and/or Preliminary Evaluation of Claim 541.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5351 to the Claim and/or Preliminary Evaluation of Claim 541.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5584 to the Claim and/or Preliminary Evaluation of Claim 541.

21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2955 to the Claim and/or Preliminary Evaluation of Claim 541.
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 2955, the remaining contest to Claim 541. *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 541 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. This claim has a reservation date of January 25, 1907, and is based on a Presidential Proclamation of January 25, 1907.
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.

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 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. Based on the file and record herein, IT IS ORDERED that Claim 541 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 541

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: SCOTT 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 14 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 207 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:

SCOTT CREEK FROM SESW, SECTION 11, TOWNSHIP 31 SOUTH, RANGE 7.5 EAST, W.M., TO SWNE, SECTION 18, 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