

**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 542

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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 542) 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 542 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 21.0 cfs to 32.0 cfs for June 1 to June 30, 16.0 cfs to 25.0 cfs for July 1 to July 31, 11.0 cfs to 14.0 cfs for Aug. 1 to Aug. 31, 9.2 cfs to 12.0 cfs for Sept. 1 to Sept. 30, 5.7 cfs to 9.1 cfs for Oct. 1 to Oct. 31, and 7.5 cfs to 8.0 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 September 30, 1999, Claim 485 was further amended to reflect a change in the place of use to include the headwaters of the main stem of Scott Creek and all tributaries of the main stem located on non-reserved lands.
5. The September 30, 1999 amendment changed the stream reach from 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. to “THE HEADWATERS OF THE MAIN STEM [Scott Creek] AND ALL TRIBUTARIES OF THE MAIN STEM . . .” This amendment expands the place of use by at least 6 river miles, and includes use from sources of water not identified in the original claim. The original claim described a reach from an upstream point to a downstream point. The amendment places additional reaches upstream from the original reach, and includes reaches from sources of water not identified in the original claim.
6. 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.
7. On May 5, 2000, the Claimant, USFS, timely filed Contest 2209 to the Preliminary Evaluation of Claim 542.
8. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 211 to the Claim and/or Preliminary Evaluation of Claim 542.
9. On May 1, 2000, Leonard Baio timely filed Contest 446 to the Claim and/or Preliminary Evaluation of Claim 542.
10. On May 2, 2000, Gary Strong timely filed Contest 681 to the Claim and/or Preliminary Evaluation of Claim 542.
11. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 916 to the Claim and/or Preliminary Evaluation of Claim 542.
12. On May 2, 2000, Robert Bartell timely filed Contest 1151 to the Claim and/or Preliminary Evaluation of Claim 542.
13. On May 2, 2000, Margaret Jacobs timely filed Contest 1385 to the Claim and/or Preliminary Evaluation of Claim 542.
14. On May 2, 2000, Carolyn Obenchain timely filed Contest 1620 to the Claim and/or Preliminary Evaluation of Claim 542.
15. On May 4, 2000, Rodney Z. James timely filed Contest 1969 to the Claim and/or Preliminary Evaluation of Claim 542.
16. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2421 to the Claim and/or Preliminary Evaluation of Claim 542.

17. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2658 to the Claim and/or Preliminary Evaluation of Claim 542.
18. On May 8, 2000, John Briggs timely filed Contest 4408 to the Claim and/or Preliminary Evaluation of Claim 542.
19. On May 8, 2000, Peter M. Bourdet timely filed Contest 4643 to the Claim and/or Preliminary Evaluation of Claim 542.
20. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4876 to the Claim and/or Preliminary Evaluation of Claim 542.
21. On May 8, 2000, Thomas William Mallams timely filed Contest 5119 to the Claim and/or Preliminary Evaluation of Claim 542.
22. On May 8, 2000, Thomas H. Bentley timely filed Contest 5352 to the Claim and/or Preliminary Evaluation of Claim 542.
23. On May 8, 2000, Thomas E. Stephens timely filed Contest 5585 to the Claim and/or Preliminary Evaluation of Claim 542.
24. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2956 to the Claim and/or Preliminary Evaluation of Claim 542.
25. 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.
26. 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).
27. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2956. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
28. 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 2209) to Claim 542.

29. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with the exception of the portion of the place of use that was expanded by the USFS's amendment of September 30, 1999 as described in Finding 5, above; the place of use recognized herein is consistent with both the USFS's original claim and with its August 3, 1999 amendment.
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. OWRD finds that the claim amendment described in Findings 4 and 5, above, constitutes a new claim under ORS 539.210. The change in place of use is significant, including the addition of at least 6 additional river miles and the use of water from a source not originally claimed. There is no evidence on the record to suggest that the place of use for this claim was not reasonably ascertainable at the time of the claim filing deadline. As a result, this amendment may not be considered in the Findings of Fact and Partial Order of Determination for this claim.
6. 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.
7. Based on the file and record herein, IT IS ORDERED that Claim 542 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 542**

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

**CLAIMANT:** UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
1220 SW 3<sup>RD</sup> ROOM 1734  
PORTLAND, OR 97204

**SOURCE OF WATER:** SCOTT CREEK, tributary to the WILLIAMSON 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	19.0
June 1 to June 30	32.0
July 1 to July 31	25.0
Aug 1 to Aug 31	14.0
Sept 1 to Sept 30	12.0
Oct 1 to Oct 31	9.1

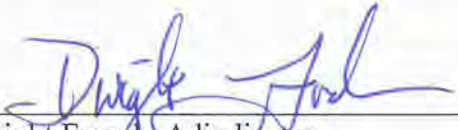
**DATE OF PRIORITY:** JANUARY 25, 1907

**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



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Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication