

**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 544

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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 544) 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 544 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 213 to the Claim and/or Preliminary Evaluation of Claim 544.
5. On May 1, 2000, Leonard Baio timely filed Contest 448 to the Claim and/or Preliminary Evaluation of Claim 544.
6. On May 2, 2000, Gary Strong timely filed Contest 683 to the Claim and/or Preliminary Evaluation of Claim 544.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 918 to the Claim and/or Preliminary Evaluation of Claim 544.

8. On May 2, 2000, Robert Bartell timely filed Contest 1153 to the Claim and/or Preliminary Evaluation of Claim 544.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1387 to the Claim and/or Preliminary Evaluation of Claim 544.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1622 to the Claim and/or Preliminary Evaluation of Claim 544.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1799 to the Claim and/or Preliminary Evaluation of Claim 544.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1971 to the Claim and/or Preliminary Evaluation of Claim 544.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2423 to the Claim and/or Preliminary Evaluation of Claim 544.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2660 to the Claim and/or Preliminary Evaluation of Claim 544.
15. On May 8, 2000, John Briggs timely filed Contest 4410 to the Claim and/or Preliminary Evaluation of Claim 544.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4645 to the Claim and/or Preliminary Evaluation of Claim 544.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4878 to the Claim and/or Preliminary Evaluation of Claim 544.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5121 to the Claim and/or Preliminary Evaluation of Claim 544.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5354 to the Claim and/or Preliminary Evaluation of Claim 544.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5587 to the Claim and/or Preliminary Evaluation of Claim 544.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2958 to the Claim and/or Preliminary Evaluation of Claim 544.
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, David Cowan, successor in interest to William J. Rust and Ethel J. Rust, and Ambrose W. McAuliffe and Roger Nicholson. *See* NOTICE OF WITHDRAWAL OF BAIO *ET AL'S* CONTESTS AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (July 2, 2002).
24. On December 31, 2002, the USFS amended the priority date of Claim 544 “from June 4, 1897 as originally claimed to July 31, 1971.”
25. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2958, the remaining contest to Claim 544. *See* WATER WATCH’S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
27. The place of use underlying Claim 544 is within or borders a federal reservation of land that is owned by the Claimant.
28. 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 has a reservation date of June 4, 1897, and is based on Presidential Proclamation of September 28, 1893, No 6, 28 Stat. 1240 and the Organic Administration Act of June 4, 1897, 16 U.S.C. 473-475, 477-482 and 551.
29. 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 544 is approved as amended by the USFS, and as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 544**

**CLAIM MAP REFERENCE:** MYLAR FILED AS CLAIM # 377, PAGE 205

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

**SOURCE OF WATER:** SEVENMILE CREEK, tributary to KLAMATH LAKE

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

**RATE:** NATURAL FLOW FROM A TRIGGER FLOW OF 76 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 403 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

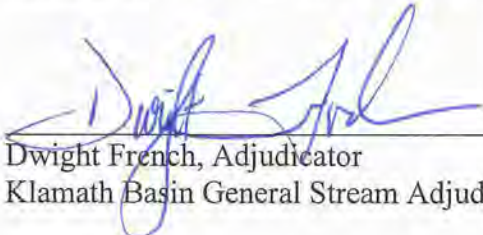
**DATE OF PRIORITY:** JULY 31, 1971

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

SEVENMILE CREEK FROM NESW, SECTION 10, TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M., TO SESE, SECTION 14, TOWNSHIP 33 SOUTH, RANGE 6 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