

**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 550

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 550) 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 550 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 43.0 cfs to 44.0 cfs for June 1 to June 30, 23.0 cfs to 28.0 cfs for July 1 to July 31, 22.0 cfs to 25.0 cfs for Aug. 1 to Aug. 31, 22.0 cfs to 26.0 cfs for Sept. 1 to Sept. 30, 17.0 cfs to 28.0 cfs for Oct. 1 to Oct. 31, and 25.0 cfs to 29.0 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 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 5, 2000, the Claimant, USFS, timely filed Contest 2214 to the Preliminary Evaluation of Claim 550.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 219 to the Claim and/or Preliminary Evaluation of Claim 550.
7. On May 1, 2000, Leonard Baio timely filed Contest 454 to the Claim and/or Preliminary Evaluation of Claim 550.
8. On May 2, 2000, Gary Strong timely filed Contest 689 to the Claim and/or Preliminary Evaluation of Claim 550.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 924 to the Claim and/or Preliminary Evaluation of Claim 550.
10. On May 2, 2000, Robert Bartell timely filed Contest 1159 to the Claim and/or Preliminary Evaluation of Claim 550.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1393 to the Claim and/or Preliminary Evaluation of Claim 550.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1628 to the Claim and/or Preliminary Evaluation of Claim 550.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1977 to the Claim and/or Preliminary Evaluation of Claim 550.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2429 to the Claim and/or Preliminary Evaluation of Claim 550.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2666 to the Claim and/or Preliminary Evaluation of Claim 550.
16. On May 8, 2000, John Briggs timely filed Contest 4416 to the Claim and/or Preliminary Evaluation of Claim 550.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4651 to the Claim and/or Preliminary Evaluation of Claim 550.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4884 to the Claim and/or Preliminary Evaluation of Claim 550.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5127 to the Claim and/or Preliminary Evaluation of Claim 550.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5360 to the Claim and/or Preliminary Evaluation of Claim 550.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5593 to the Claim and/or Preliminary Evaluation of Claim 550.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2964 to the Claim and/or Preliminary Evaluation of Claim 550.
23. 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.
24. 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).
25. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2964. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
26. 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 2214) to Claim 550.
27. 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.
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. 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 550 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 550

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 259

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

SOURCE OF WATER: SPENCER CREEK, tributary to the KLAMATH 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	66.0
June 1 to June 30	44.0
July 1 to July 31	28.0
Aug 1 to Aug 31	25.0
Sept 1 to Sept 30	26.0
Oct 1 to Oct 31	28.0

DATE OF PRIORITY: MARCH 2, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPENCER CREEK FROM NWSW, SECTION 18, TOWNSHIP 38 SOUTH, RANGE 6 EAST, W.M., TO NWSE, SECTION 18, TOWNSHIP 38 SOUTH, RANGE 6 EAST, W.M.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication