

**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 552

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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 552) 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 552 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 221 to the Claim and/or Preliminary Evaluation of Claim 552.
5. On May 1, 2000, Leonard Baio timely filed Contest 456 to the Claim and/or Preliminary Evaluation of Claim 552.
6. On May 2, 2000, Gary Strong timely filed Contest 691 to the Claim and/or Preliminary Evaluation of Claim 552.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 926 to the Claim and/or Preliminary Evaluation of Claim 552.

8. On May 2, 2000, Robert Bartell timely filed Contest 1161 to the Claim and/or Preliminary Evaluation of Claim 552.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1395 to the Claim and/or Preliminary Evaluation of Claim 552.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1630 to the Claim and/or Preliminary Evaluation of Claim 552.
11. On May 4, 2000, Ambrose W. McAuliffe and Roger Nicholson timely filed Contest 1801 to the Claim and/or Preliminary Evaluation of Claim 552.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1979 to the Claim and/or Preliminary Evaluation of Claim 552.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2431 to the Claim and/or Preliminary Evaluation of Claim 552.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2668 to the Claim and/or Preliminary Evaluation of Claim 552.
15. On May 8, 2000, John Briggs timely filed Contest 4418 to the Claim and/or Preliminary Evaluation of Claim 552.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4653 to the Claim and/or Preliminary Evaluation of Claim 552.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4886 to the Claim and/or Preliminary Evaluation of Claim 552.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5129 to the Claim and/or Preliminary Evaluation of Claim 552.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5362 to the Claim and/or Preliminary Evaluation of Claim 552.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5595 to the Claim and/or Preliminary Evaluation of Claim 552.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2966 to the Claim and/or Preliminary Evaluation of Claim 552.
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 February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2966, the remaining contest to Claim 552. *See* WATER WATCH'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 552 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 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.
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.
29. The USFS's Claim 552 states that the lower end of the instream reach of Threemile Creek is located in the NWSE, SECTION 2, TOWNSHIP 34 SOUTH, RANGE 6 EAST, W.M. However, SECTION 2 is an irregular section, and therefore, the boundary of the lower end of the reach of this claim is more accurately described as the EAST BOUNDARY OF GOVERNMENT LOT 23, SECTION 2, TOWNSHIP 34 SOUTH, RANGE 6 EAST, W.M.

## **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. As explained in Finding 29, above, the lower reach of Threemile Creek is described as the EAST BOUNDARY OF GOVERNMENT LOT 23, SECTION 2, TOWNSHIP 34 SOUTH, RANGE 6 EAST, W.M.

3. 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 552 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 552**

**CLAIM MAP REFERENCE:** MYLAR FILED AS CLAIM # 377, PAGE 217

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

**SOURCE OF WATER:** THREEMILE CREEK, tributary to FOURMILE CREEK

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

**RATE:** NATURAL FLOW FROM A TRIGGER FLOW OF 6.6 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 237 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:** JUNE 4, 1897

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

THREEMILE CREEK FROM SWSW, SECTION 5, TOWNSHIP 34 SOUTH, RANGE 6 EAST, W.M., TO EAST BOUNDARY GOVERNMENT LOT 23, SECTION 2, TOWNSHIP 34 SOUTH, RANGE 6 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