

**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 565

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 565) 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 565 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 1273 cfs to 923 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 234 to the Claim and/or Preliminary Evaluation of Claim 565.

6. On May 1, 2000, Leonard Baio timely filed Contest 469 to the Claim and/or Preliminary Evaluation of Claim 565.
7. On May 2, 2000, Gary Strong timely filed Contest 704 to the Claim and/or Preliminary Evaluation of Claim 565.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 939 to the Claim and/or Preliminary Evaluation of Claim 565.
9. On May 2, 2000, Robert Bartell timely filed Contest 1174 to the Claim and/or Preliminary Evaluation of Claim 565.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1408 to the Claim and/or Preliminary Evaluation of Claim 565.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1643 to the Claim and/or Preliminary Evaluation of Claim 565.
12. On May 4, 2000, Rodney Z. James timely filed Contest 1992 to the Claim and/or Preliminary Evaluation of Claim 565.
13. On May 4, 2000, Theodore Springer and Patricia Springer timely filed Contest 2047 to the Claim and/or Preliminary Evaluation of Claim 565.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2444 to the Claim and/or Preliminary Evaluation of Claim 565.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2681 to the Claim and/or Preliminary Evaluation of Claim 565.
16. On May 8, 2000, Duane F. Martin timely filed Contest 3096 to the Claim and/or Preliminary Evaluation of Claim 565.
17. On May 8, 2000, John Briggs timely filed Contest 4431 to the Claim and/or Preliminary Evaluation of Claim 565.
18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4666 to the Claim and/or Preliminary Evaluation of Claim 565.
19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4899 to the Claim and/or Preliminary Evaluation of Claim 565.
20. On May 8, 2000, Thomas William Mallams timely filed Contest 5142 to the Claim and/or Preliminary Evaluation of Claim 565.

21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5375 to the Claim and/or Preliminary Evaluation of Claim 565.
22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5608 to the Claim and/or Preliminary Evaluation of Claim 565.
23. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2979 to the Claim and/or Preliminary Evaluation of Claim 565.
24. 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.
25. On April 5, 2002, Theodore F. Springer and Patricia A. Springer withdrew Contest 2047 by letter. That letter states in pertinent part: "Please withdraw our names, Theodore F. and Patricia A. Springer from Case No. 010 as we no longer wish to participate."
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 November 13, 2002, Duane F. Martin withdrew with prejudice Contest 3096. *See* NOTICE OF WITHDRAWAL OF DUANE F. MARTIN'S CONTEST AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Nov. 13, 2002).
28. On December 31, 2002, the USFS amended the priority date of Claim 565 "from April 15, 1961 as originally claimed to March 1, 1985."
29. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2979, the remaining contest to Claim 565. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
30. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
31. The place of use underlying Claim 565 is within or borders a federal reservation of land that is owned by the Claimant.
32. 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 April 15, 1961, and is based on the “Proclamation Taking Title to Certain Lands. . .” April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961).

33. 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 565 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. 565

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 218 and PAGE 220

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

SOURCE OF WATER: SPRAGUE RIVER, 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 923 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 7409 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: MARCH 1, 1985

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SPRAGUE RIVER FROM NENW, SECTION 30, TOWNSHIP 34 SOUTH, RANGE 8 EAST, W.M., TO NENW, SECTION 36, TOWNSHIP 34 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