

**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 566 |

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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 566) 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 566 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 493.0 cfs to 590.0 cfs for June 1 to June 30, 271.0 cfs to 300.0 cfs for July 1 to July 31, 215.0 cfs to 248.0 cfs for Aug. 1 to Aug. 31, 248.0 cfs to 269.0 cfs for Sept. 1 to Sept. 30, 307.0 cfs to 320.0 cfs for Oct. 1 to Oct. 30, and 348.0 cfs to 375.0 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 2225 to the Preliminary Evaluation of Claim 566.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 235 to the Claim and/or Preliminary Evaluation of Claim 566.
7. On May 1, 2000, Leonard Baio timely filed Contest 470 to the Claim and/or Preliminary Evaluation of Claim 566.
8. On May 2, 2000, Gary Strong timely filed Contest 705 to the Claim and/or Preliminary Evaluation of Claim 566.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 940 to the Claim and/or Preliminary Evaluation of Claim 566.
10. On May 2, 2000, Robert Bartell timely filed Contest 1175 to the Claim and/or Preliminary Evaluation of Claim 566.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1409 to the Claim and/or Preliminary Evaluation of Claim 566.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1644 to the Claim and/or Preliminary Evaluation of Claim 566.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1993 to the Claim and/or Preliminary Evaluation of Claim 566.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2445 to the Claim and/or Preliminary Evaluation of Claim 566.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2682 to the Claim and/or Preliminary Evaluation of Claim 566.
16. On May 8, 2000, Duane F. Martin timely filed Contest 3097 to the Claim and/or Preliminary Evaluation of Claim 566.
17. On May 8, 2000, John Briggs timely filed Contest 4432 to the Claim and/or Preliminary Evaluation of Claim 566.
18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4667 to the Claim and/or Preliminary Evaluation of Claim 566.

19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4900 to the Claim and/or Preliminary Evaluation of Claim 566.
20. On May 8, 2000, Thomas William Mallams timely filed Contest 5143 to the Claim and/or Preliminary Evaluation of Claim 566.
21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5376 to the Claim and/or Preliminary Evaluation of Claim 566.
22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5609 to the Claim and/or Preliminary Evaluation of Claim 566.
23. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2980 to the Claim and/or Preliminary Evaluation of Claim 566.
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 009.
25. 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).
26. On November 13, 2002, Duane F. Martin withdrew with prejudice Contest 3097. *See* NOTICE OF WITHDRAWAL OF DUANE F. MARTIN'S CONTEST AGAINST THE UNITED STATES FOREST SERVICE CLAIMS (Nov. 13, 2002).
27. On December 31, 2002, the USFS amended Claim 566 to reflect a reduction from the August 3, 1999 amended rates to a single rate of 150 cfs for the entire season of use; and amended the priority date "from April 15, 1961 as originally claimed, to March 1, 1985."
28. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 2980. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
29. 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 2225) to Claim 566.

30. 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 two exceptions:
  - a. the priority date is changed to March 1, 1985 as set forth in the USFS's amended claim dated December 31, 2002; and
  - b. the rate is changed to 150 cfs as set forth in the USFS's amended claim dated December 31, 2002.
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 566 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 566**

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

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

**SOURCE OF WATER:** SPRAGUE RIVER, 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   | 150.0  |
| June 1 to June 30 | 150.0  |
| July 1 to July 31 | 150.0  |
| Aug 1 to Aug 31   | 150.0  |
| Sept 1 to Sept 30 | 150.0  |
| Oct 1 to Oct 31   | 150.0  |

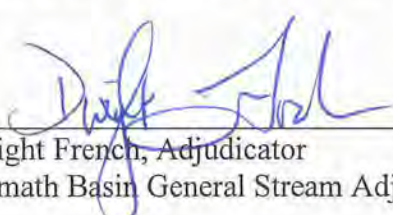
**DATE OF PRIORITY:** MARCH 1, 1985

**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

  
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Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication