

**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 568

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 568) 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 568 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 237 to the Claim and/or Preliminary Evaluation of Claim 568.
5. On May 1, 2000, Leonard Baio timely filed Contest 472 to the Claim and/or Preliminary Evaluation of Claim 568.
6. On May 2, 2000, Gary Strong timely filed Contest 707 to the Claim and/or Preliminary Evaluation of Claim 568.
7. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 942 to the Claim and/or Preliminary Evaluation of Claim 568.

8. On May 2, 2000, Robert Bartell timely filed Contest 1177 to the Claim and/or Preliminary Evaluation of Claim 568.
9. On May 2, 2000, Margaret Jacobs timely filed Contest 1411 to the Claim and/or Preliminary Evaluation of Claim 568.
10. On May 2, 2000, Carolyn Obenchain timely filed Contest 1646 to the Claim and/or Preliminary Evaluation of Claim 568.
11. On May 4, 2000, Rodney Z. James timely filed Contest 1995 to the Claim and/or Preliminary Evaluation of Claim 568.
12. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2447 to the Claim and/or Preliminary Evaluation of Claim 568.
13. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2684 to the Claim and/or Preliminary Evaluation of Claim 568.
14. On May 8, 2000, John Briggs timely filed Contest 4434 to the Claim and/or Preliminary Evaluation of Claim 568.
15. On May 8, 2000, Peter M. Bourdet timely filed Contest 4669 to the Claim and/or Preliminary Evaluation of Claim 568.
16. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4902 to the Claim and/or Preliminary Evaluation of Claim 568.
17. On May 8, 2000, Thomas William Mallams timely filed Contest 5145 to the Claim and/or Preliminary Evaluation of Claim 568.
18. On May 8, 2000, Thomas H. Bentley timely filed Contest 5378 to the Claim and/or Preliminary Evaluation of Claim 568.
19. On May 8, 2000, Thomas E. Stephens timely filed Contest 5611 to the Claim and/or Preliminary Evaluation of Claim 568.
20. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2982 to the Claim and/or Preliminary Evaluation of Claim 568.
21. 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.
22. 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).

23. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2982, the remaining contest to Claim 568. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
24. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
25. The place of use underlying Claim 568 is within or borders a federal reservation of land that is owned by the Claimant.
26. 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 October 14, 1935, and is based on Presidential Proclamation No. 2143, October 14, 1935.
27. 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.
28. The USFS's Claim 568 states that the beginning of the instream reach of the South Fork Sprague River is located in the NESW, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M.; however, the USFS claim map (Mylar filed as Claim # 377, Page 255), shows that the reach of this claim begins in the NESE, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M. Therefore, OWRD finds that the beginning of the instream reach for this claim is SOUTH FORK SPRAGUE RIVER FROM NESE, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 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. 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 beginning of the instream reach for this claim is the SOUTH FORK SPRAGUE RIVER FROM NESE, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M.

4. Based on the file and record herein, IT IS ORDERED that Claim 568 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 568**

**CLAIM MAP REFERENCE:** MYLAR FILED AS CLAIM # 377, PAGE 255

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

**SOURCE OF WATER:** SOUTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

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

**RATE:** NATURAL FLOW FROM A TRIGGER FLOW OF 140 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 926 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:** OCTOBER 14, 1935

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

SOUTH FORK SPRAGUE RIVER FROM NESE, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M., TO SENW, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 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