

**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 569

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 569) 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 569 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 16.0 cfs to 17.0 cfs for July 1 to July 31, 10.0 cfs to 11.0 cfs for Aug. 1 to Aug. 31, 10.0 cfs to 12.0 cfs for Sept. 1 to Sept. 30, and 16.0 cfs to 18.0 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 2227 to the Preliminary Evaluation of Claim 569.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 238 to the Claim and/or Preliminary Evaluation of Claim 569.
7. On May 1, 2000, Leonard Baio timely filed Contest 473 to the Claim and/or Preliminary Evaluation of Claim 569.
8. On May 2, 2000, Gary Strong timely filed Contest 708 to the Claim and/or Preliminary Evaluation of Claim 569.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 943 to the Claim and/or Preliminary Evaluation of Claim 569.
10. On May 2, 2000, Robert Bartell timely filed Contest 1178 to the Claim and/or Preliminary Evaluation of Claim 569.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1412 to the Claim and/or Preliminary Evaluation of Claim 569.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1647 to the Claim and/or Preliminary Evaluation of Claim 569.
13. On May 4, 2000, Rodney Z. James timely filed Contest 1996 to the Claim and/or Preliminary Evaluation of Claim 569.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2448 to the Claim and/or Preliminary Evaluation of Claim 569.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2685 to the Claim and/or Preliminary Evaluation of Claim 569.
16. On May 8, 2000, John Briggs timely filed Contest 4435 to the Claim and/or Preliminary Evaluation of Claim 569.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4670 to the Claim and/or Preliminary Evaluation of Claim 569.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4903 to the Claim and/or Preliminary Evaluation of Claim 569.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5146 to the Claim and/or Preliminary Evaluation of Claim 569.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5379 to the Claim and/or Preliminary Evaluation of Claim 569.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5612 to the Claim and/or Preliminary Evaluation of Claim 569.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 2983 to the Claim and/or Preliminary Evaluation of Claim 569.
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 2983. *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 2227) to Claim 569.
27. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
28. The USFS's Claim 569 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 the SOUTH FORK SPRAGUE RIVER FROM NESE, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M.

## B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with exception of the scrivener's error in the location of the beginning of the instream reach of the South Fork Sprague River listed in the original claim and in the August 3, 1999 claim amendment, as described in Finding 28, above, which was incorporated into the Preliminary Evaluation and the Settlement Agreement; the location of the beginning of the instream reach is corrected to NESE, Section 2.
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 569 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 569**

**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 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	137.0
June 1 to June 30	52.0
July 1 to July 31	17.0
Aug 1 to Aug 31	11.0
Sept 1 to Sept 30	12.0
Oct 1 to Oct 31	14.0

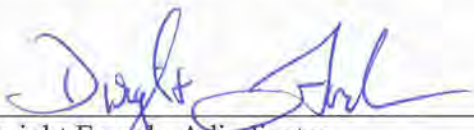
**DATE OF PRIORITY:** OCTOBER 14, 1935

**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

  
\_\_\_\_\_  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication