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 UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 577

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 for Claim 575 and Statement and Proof of Claim for Claim 577 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. In a July 1, 1999 letter, OWRD requested clarification of Claim 575, in part, as follows: "According to your claim map, there are two separate reaches of the stream which are claimed, not one continuous reach. If, indeed, there is more than one claimed stream reach, *please provide a separate claim form for each individual stream reach being claimed as provided for in OAR 690-028-0027."*

3. On August 3, 1999, the USFS timely amended Claim 575 and timely amended Claim 577 as to rate of discharge of water for the lower and upper thresholds of flow, and place of use. Additionally, in response to OWRD's request, the USFS submitted an additional Statement and Proof of Claim that covered a portion of the original claim(s). OWRD labeled this additional claim as Claim 724.

4. Identical copies of a map titled "Land Status for Sycan River Above Sycan Marsh Instream Flow Claim" ("Land Status Map") can be found within both Claims 575 and 577 (*see* Claim 575, Page 97-599-0026, and Claim 577, Page 97-601-0026). This Land Status Map shows an "Upper Reach" and a "Lower Reach" as follows:

a. The "Lower Reach" is from SESE, SECTION 23, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M. to SWSW, SECTION 22, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M., and consists of one continuous reach, and has a reservation date of October 14, 1935.

b. The"Upper Reach" is from SWNE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. to SWSW, SECTION 24, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M., and consists of two reaches separated by non-reserved lands, and has a reservation date of September 17, 1906. Within this "Upper Reach," the uppermost segment is from SWNE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. to NWSW, SECTION 15, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M., (here called "upper segment"). The lowermost segment of this "Upper Reach" is from NWNW, SECTION 16, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. to SWSW, SECTION 24, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M. (here called "lower segment").

- In the original claims, Claim 575 cited a reservation date of September 17, 1906, but described the "Lower Reach", and Claim 577 cited a reservation date of October 14, 1935, but described the "Upper Reach." According to the "Land Status Map," the lower reach was assigned the priority date of the upper reach, and visa versa.

- In the August 3, 1999 amendments of these two claims, the amendment for Claim 575 described the upper segment of the "Upper Reach," but cited a reservation date of October 14, 1935; and the amendment for Claim 577 described the "Lower Reach," but cited a reservation date of September 17, 1906. Again, according to the "Land Status Map," the upper reach was assigned the priority date of the lower reach, and visa versa. Claim 724, which was bifurcated from Claim 575, describes the lower segment of the "Upper Reach," but cited a reservation date of October 14, 1935. (Note: In Claim 724, the NWNW of Section 16 is incorrectly described as the NENE - *See* PARTIAL ORDER OF DETERMINATION FOR CLAIM 724).

- On October 14, 1999, the USFS submitted Mylar claim maps to OWRD. (Claim Map Reference – Mylar filed as Claim #377, Page 202 and Page 215). These maps assign an a "Lower Reach" to Claim 577, an upper segment of the "Upper Reach" to Claim 575, and a lower segment of "Upper Reach" to Claim 724.

- Notwithstanding the ambiguity of Claims 575 and 577 and their respective amendments, OWRD finds a clear intention of the USFS to have filed claims consistent with "Upper Reach" and "Lower Reach" as shown on the Land Status Map. Therefore OWRD has assigned Claims 575, 577 and 724 as follows:

  a. Claim 577 is for the "Lower Reach," being the Sycan River from SESE, SECTION 23, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M. to SWSW,

SECTION 22, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M., and has a reservation date of October 14, 1935.

b. Claim 575 is for the upper segment of the "Upper Reach," being the Sycan River from SWNE, SECTION 22, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. to NWSW, SECTION 15, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M., and has a reservation date of September 17, 1906.

c. Claim 724 is for the lower segment of the "Upper Reach," being the Sycan River from NWNW, SECTION 16, TOWNSHIP 33 SOUTH, RANGE 15 EAST, W.M. to SWSW, SECTION 24, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M., and has a reservation date of September 17, 1906.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating that Claim 577 was approved as amended on August 3, 1999.

6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 246 to the Claim and/or Preliminary Evaluation of Claim 577.

7. On May 1, 2000, Leonard Baio timely filed Contest 481 to the Claim and/or Preliminary Evaluation of Claim 577.

8. On May 2, 2000, Gary Strong timely filed Contest 716 to the Claim and/or Preliminary Evaluation of Claim 577.

9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 951 to the Claim and/or Preliminary Evaluation of Claim 577.

10. On May 2, 2000, Robert Bartell timely filed Contest 1186 to the Claim and/or Preliminary Evaluation of Claim 577.

11. On May 2, 2000, Margaret Jacobs timely filed Contest 1420 to the Claim and/or Preliminary Evaluation of Claim 577.

12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1655 to the Claim and/or Preliminary Evaluation of Claim 577.

13. On May 4, 2000, Rodney Z. James timely filed Contest 2004 to the Claim and/or Preliminary Evaluation of Claim 577.

14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2456 to the Claim and/or Preliminary Evaluation of Claim 577.

15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2693 to the Claim and/or Preliminary Evaluation of Claim 577.

16. On May 8, 2000, John Briggs timely filed Contest 4443 to the Claim and/or Preliminary Evaluation of Claim 577.

17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4678 to the Claim and/or Preliminary Evaluation of Claim 577.

18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4911 to the Claim and/or Preliminary Evaluation of Claim 577.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5154 to the Claim and/or Preliminary Evaluation of Claim 577.

20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5387 to the Claim and/or Preliminary Evaluation of Claim 577.

21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5620 to the Claim and/or Preliminary Evaluation of Claim 577.

22. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2991 to the Claim and/or Preliminary Evaluation of Claim 577.

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 010.

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 2991, the remaining contest to Claim 577. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).

26. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.

27. The place of use underlying Claim 577 is within or borders a federal reservation of land that is owned by the Claimant.

28. 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.

29. 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 priority date is October 14, 1935 as set forth in the original claim and as consistent with the "Land Status Maps" in Claims 575 and 577 as described in Finding 4, above.

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 577 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 577

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 202

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

SOURCE OF WATER: SYCAN 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 81 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 1921 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:
SYCAN RIVER FROM SESE, SECTION 23, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M. to SWSW, SECTION 22, TOWNSHIP 32 SOUTH, RANGE 14 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