

**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 579 |

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 579) 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 579, in part, as follows: “According to your claim map, there are three 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 579 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 divided Claim 579 by submitting a two additional Statements and Proofs of Claim that covered certain portions of the original Claim 579. OWRD labeled these as Claim 712 and Claim 715.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 579 was approved.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 248 to the Claim and/or Preliminary Evaluation of Claim 579.

6. On May 1, 2000, Leonard Baio timely filed Contest 483 to the Claim and/or Preliminary Evaluation of Claim 579.
7. On May 2, 2000, Gary Strong timely filed Contest 718 to the Claim and/or Preliminary Evaluation of Claim 579.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 953 to the Claim and/or Preliminary Evaluation of Claim 579.
9. On May 2, 2000, Robert Bartell timely filed Contest 1188 to the Claim and/or Preliminary Evaluation of Claim 579.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1422 to the Claim and/or Preliminary Evaluation of Claim 579.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1657 to the Claim and/or Preliminary Evaluation of Claim 579.
12. On May 4, 2000, Rodney Z. James timely filed Contest 2006 to the Claim and/or Preliminary Evaluation of Claim 579.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2458 to the Claim and/or Preliminary Evaluation of Claim 579.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2695 to the Claim and/or Preliminary Evaluation of Claim 579.
15. On May 8, 2000, John Briggs timely filed Contest 4445 to the Claim and/or Preliminary Evaluation of Claim 579.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4680 to the Claim and/or Preliminary Evaluation of Claim 579.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4913 to the Claim and/or Preliminary Evaluation of Claim 579.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5156 to the Claim and/or Preliminary Evaluation of Claim 579.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5389 to the Claim and/or Preliminary Evaluation of Claim 579.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5622 to the Claim and/or Preliminary Evaluation of Claim 579.

21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2993 to the Claim and/or Preliminary Evaluation of Claim 579.
22. 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.
23. 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).
24. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2993, the remaining contest to Claim 579. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
25. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
26. The place of use underlying Claim 579 is within or borders a federal reservation of land that is owned by the Claimant.
27. 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 November 15, 1974, and is based on a Declaration of Taking, November 15, 1974, Civil No. 74-894, U.S. District Court of Oregon.
28. 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. Based on the file and record herein, IT IS ORDERED that Claim 579 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 579

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 192 and PAGE 193

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

SOURCE OF WATER: WILLIAMSON RIVER, tributary to KLAMATH LAKE

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 99 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 1195 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: NOVEMBER 15, 1974

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM SWNW, SECTION 30, TOWNSHIP 31 SOUTH, RANGE 11 EAST, W.M., TO NESE, SECTION 24, TOWNSHIP 31 SOUTH, RANGE 10 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