

**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 588

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 588) 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 588 as to rate of discharge of water for the lower and upper thresholds of flow.
3. The August 3, 1999 amendment to the original claim reduced the lower threshold for natural flow from 275 cfs to 209 cfs. 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 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 257 to the Claim and/or Preliminary Evaluation of Claim 588.
6. On May 1, 2000, Leonard Baio timely filed Contest 492 to the Claim and/or Preliminary Evaluation of Claim 588.

7. On May 2, 2000, Gary Strong timely filed Contest 727 to the Claim and/or Preliminary Evaluation of Claim 588.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 962 to the Claim and/or Preliminary Evaluation of Claim 588.
9. On May 2, 2000, Robert Bartell timely filed Contest 1197 to the Claim and/or Preliminary Evaluation of Claim 588.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1431 to the Claim and/or Preliminary Evaluation of Claim 588.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1666 to the Claim and/or Preliminary Evaluation of Claim 588.
12. On May 4, 2000, Rodney Z. James timely filed Contest 2015 to the Claim and/or Preliminary Evaluation of Claim 588.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2467 to the Claim and/or Preliminary Evaluation of Claim 588.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2704 to the Claim and/or Preliminary Evaluation of Claim 588.
15. On May 8, 2000, John Briggs timely filed Contest 4454 to the Claim and/or Preliminary Evaluation of Claim 588.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4689 to the Claim and/or Preliminary Evaluation of Claim 588.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4922 to the Claim and/or Preliminary Evaluation of Claim 588.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5165 to the Claim and/or Preliminary Evaluation of Claim 588.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5398 to the Claim and/or Preliminary Evaluation of Claim 588.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5631 to the Claim and/or Preliminary Evaluation of Claim 588.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3002 to the Claim and/or Preliminary Evaluation of Claim 588.

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 December 31, 2002, the USFS amended the priority date of Claim 588 "from April 15, 1961 as originally claimed to March 1, 1985."
25. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 3002, the remaining contest to Claim 588. *See WATER WATCH'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 588 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 unless the claimant amended the priority date to a later date. The Claimant stated that this claim has a reservation date of April 15, 1961, and is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961). OWRD finds that in addition to the reservation date of April 15, 1961, that the portion of Claim 588 located in the NWNE (Lot 2), SECTION 2, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M. 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.
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 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. Based on the file and record herein, IT IS ORDERED that Claim 588 is approved as amended by the USFS, and as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 588

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

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 209 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 5175 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: MARCH 1, 1985

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILLIAMSON RIVER FROM NWNE, SECTION 2, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., TO SESE, SECTION 3, TOWNSHIP 34 SOUTH, RANGE 7 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