

**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 589

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 589) 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 589 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. 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 2240 to the Preliminary Evaluation of Claim 589.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 258 to the Claim and/or Preliminary Evaluation of Claim 589.
7. On May 1, 2000, Leonard Baio timely filed Contest 493 to the Claim and/or Preliminary Evaluation of Claim 589.
8. On May 2, 2000, Gary Strong timely filed Contest 728 to the Claim and/or Preliminary Evaluation of Claim 589.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 963 to the Claim and/or Preliminary Evaluation of Claim 589.
10. On May 2, 2000, Robert Bartell timely filed Contest 1198 to the Claim and/or Preliminary Evaluation of Claim 589.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1432 to the Claim and/or Preliminary Evaluation of Claim 589.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1667 to the Claim and/or Preliminary Evaluation of Claim 589.
13. On May 4, 2000, Rodney Z. James timely filed Contest 2016 to the Claim and/or Preliminary Evaluation of Claim 589.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2468 to the Claim and/or Preliminary Evaluation of Claim 589.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2705 to the Claim and/or Preliminary Evaluation of Claim 589.
16. On May 8, 2000, John Briggs timely filed Contest 4455 to the Claim and/or Preliminary Evaluation of Claim 589.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4690 to the Claim and/or Preliminary Evaluation of Claim 589.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4923 to the Claim and/or Preliminary Evaluation of Claim 589.
19. On May 8, 2000, Thomas William Mallams timely filed Contest 5166 to the Claim and/or Preliminary Evaluation of Claim 589.

20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5399 to the Claim and/or Preliminary Evaluation of Claim 589.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5632 to the Claim and/or Preliminary Evaluation of Claim 589.
22. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 3003 to the Claim and/or Preliminary Evaluation of Claim 589.
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). *See also* NOTICE OF ERRATA (July 18, 2002).
25. On December 31, 2002, the USFS amended Claim 589 reducing the natural flow limits stated in the August 3, 1999 amendment from 209.0 cfs to 60.0 cfs for May 1 to May 30, from 71.0 cfs to 60.0 cfs for June 1 to June 30, and 106.0 cfs to 60 cfs for Nov. 1 to Nov. 15; and amended the priority date "from April 15, 1961 as originally claimed, to March 1, 1985."
26. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 3003. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
27. 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 2240) to Claim 589.
28. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. the priority date is changed to March 1, 1985 as set forth in the USFS's amended claim dated December 31, 2002; and
 - b. the rates are changed as set forth in the USFS's amended claim dated December 31, 2002.
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 589 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 589

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 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	60.0
June 1 to June 30	60.0
July 1 to July 31	33.0
Aug 1 to Aug 31	21.0
Sept 1 to Sept 30	21.0
Oct 1 to Oct 31	21.0


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