

**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 709

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 488) 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 488, 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, in response to OWRD’s request, the USFS divided Claim 488 by submitting an additional Statement and Proof of Claim that covered a portion of the original Claim 488. OWRD labeled this as Claim 709.
4. The August 3, 1999 additional Statement and Proof of Claim for Claim 709 amended one element of the original Claim 488 that pertains to the Claim 709 reach. It changed the lower threshold for natural flow from 31 cfs to 19 cfs. This 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.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 709 was approved.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 260 to the Claim and/or Preliminary Evaluation of Claim 709.
7. On May 1, 2000, Leonard Baio timely filed Contest 495 to the Claim and/or Preliminary Evaluation of Claim 709.
8. On May 2, 2000, Gary Strong timely filed Contest 730 to the Claim and/or Preliminary Evaluation of Claim 709.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 965 to the Claim and/or Preliminary Evaluation of Claim 709.
10. On May 2, 2000, Robert Bartell timely filed Contest 1200 to the Claim and/or Preliminary Evaluation of Claim 709.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1434 to the Claim and/or Preliminary Evaluation of Claim 709.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1669 to the Claim and/or Preliminary Evaluation of Claim 709.
13. On May 4, 2000, Rodney Z. James timely filed Contest 2010 to the Claim and/or Preliminary Evaluation of Claim 709.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2470 to the Claim and/or Preliminary Evaluation of Claim 709.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2607 to the Claim and/or Preliminary Evaluation of Claim 709.
16. On May 8, 2000, John Briggs timely filed Contest 4457 to the Claim and/or Preliminary Evaluation of Claim 709.
17. On May 8, 2000, Peter M. Bourdet timely filed Contest 4692 to the Claim and/or Preliminary Evaluation of Claim 709.
18. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4925 to the Claim and/or Preliminary Evaluation of Claim 709.

19. On May 8, 2000, Thomas William Mallams timely filed Contest 5168 to the Claim and/or Preliminary Evaluation of Claim 709.
20. On May 8, 2000, Thomas H. Bentley timely filed Contest 5401 to the Claim and/or Preliminary Evaluation of Claim 709.
21. On May 8, 2000, Thomas E. Stephens timely filed Contest 5634 to the Claim and/or Preliminary Evaluation of Claim 709.
22. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3076 to the Claim and/or Preliminary Evaluation of Claim 709.
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 3076, the remaining contest to Claim 712. *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 709 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 January 25, 1907, and is based on a Presidential Proclamation of January 25, 1907.
29. The rate 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 Finding 4, above, does not constitute a new claim under ORS 539.210. This determination is based on the factors described in Finding 4, above. Because the amendment occurred prior to the beginning of open inspection, it is permissible and is incorporated into the Claimant's Claim 709 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 709 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 709

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 176

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

SOURCE OF WATER: MILLER CREEK, tributary to the WILLIAMSON RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 19 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 527 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

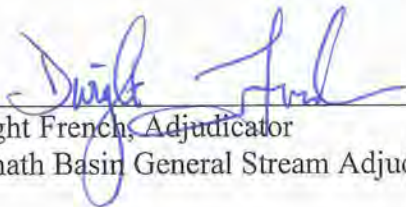
DATE OF PRIORITY: JANUARY 25, 1907

THE PLACE OF USE IS LOCATED AS FOLLOWS:

MILLER CREEK FROM SWNE, SECTION 32, TOWNSHIP 27 SOUTH, RANGE 7 EAST,
W.M., TO SENE, SECTION 32, TOWNSHIP 27 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