

**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 712

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, 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. This Partial Order of Determination pertains only to Claim 712.
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 712 was approved.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 263 to the Claim and/or Preliminary Evaluation of Claim 712.
6. On May 1, 2000, Leonard Baio timely filed Contest 498 to the Claim and/or Preliminary Evaluation of Claim 712.

7. On May 2, 2000, Gary Strong timely filed Contest 733 to the Claim and/or Preliminary Evaluation of Claim 712.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 968 to the Claim and/or Preliminary Evaluation of Claim 712.
9. On May 2, 2000, Robert Bartell timely filed Contest 1203 to the Claim and/or Preliminary Evaluation of Claim 712.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1437 to the Claim and/or Preliminary Evaluation of Claim 712.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1672 to the Claim and/or Preliminary Evaluation of Claim 712.
12. On May 4, 2000, Rodney Z. James timely filed Contest 2021 to the Claim and/or Preliminary Evaluation of Claim 712.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2473 to the Claim and/or Preliminary Evaluation of Claim 712.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2710 to the Claim and/or Preliminary Evaluation of Claim 712.
15. On May 8, 2000, John Briggs timely filed Contest 4460 to the Claim and/or Preliminary Evaluation of Claim 712.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4695 to the Claim and/or Preliminary Evaluation of Claim 712.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4928 to the Claim and/or Preliminary Evaluation of Claim 712.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5171 to the Claim and/or Preliminary Evaluation of Claim 712.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5404 to the Claim and/or Preliminary Evaluation of Claim 712.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5637 to the Claim and/or Preliminary Evaluation of Claim 712.
21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3079 to the Claim and/or Preliminary Evaluation of Claim 712.

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 3079, the remaining contest to Claim 712. *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 712 is within or borders a federal reservation of land that is owned by the Claimant.
- 27.
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 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 and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
30. The USFS's Claim 712 states that the beginning of the instream reach of the Williamson River is located in the NENE, SECTION 24, TOWNSHIP 31 SOUTH, RANGE 10 EAST, W.M. The claim map (Mylar filed as Claim # 377, Page 192) shows that although the reach of this claim begins at the west boundary of the NENE, it does not go through the NENE. The west boundary of the NENE, is the east boundary of the NWNE, and the reach does go through the NWNE. Therefore, OWRD finds that the beginning of the instream reach for this claim is best described as the WILLIAMSON RIVER FROM NWNE, SECTION 24, TOWNSHIP 31 SOUTH, RANGE 10 EAST, W.M.

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. As explained in Finding 29, above, the beginning of the instream reach for this claim is described as the WILLIAMSON RIVER FROM NWNE, SECTION 24, TOWNSHIP 31 SOUTH, RANGE 10 EAST, W.M.
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 712 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 712

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 NWNE, SECTION 24, TOWNSHIP 31 SOUTH, RANGE 10 EAST, W.M., TO NWSW, SECTION 7, TOWNSHIP 31 SOUTH, RANGE 11 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