

**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 721

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 503) 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 503, 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 503 by submitting a two additional Statements and Proofs of Claim that covered certain portions of the original Claim 503. OWRD labeled these as Claim 718 and Claim 721. This Partial Order of Determination pertains only to Claim 721.
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 721 was approved.
5. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 272 to the Claim and/or Preliminary Evaluation of Claim 721.

6. On May 1, 2000, Leonard Baio timely filed Contest 507 to the Claim and/or Preliminary Evaluation of Claim 721.
7. On May 2, 2000, Gary Strong timely filed Contest 742 to the Claim and/or Preliminary Evaluation of Claim 721.
8. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 977 to the Claim and/or Preliminary Evaluation of Claim 721.
9. On May 2, 2000, Robert Bartell timely filed Contest 1212 to the Claim and/or Preliminary Evaluation of Claim 721.
10. On May 2, 2000, Margaret Jacobs timely filed Contest 1446 to the Claim and/or Preliminary Evaluation of Claim 721.
11. On May 2, 2000, Carolyn Obenchain timely filed Contest 1681 to the Claim and/or Preliminary Evaluation of Claim 721.
12. On May 4, 2000, Rodney Z. James timely filed Contest 2030 to the Claim and/or Preliminary Evaluation of Claim 721.
13. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2482 to the Claim and/or Preliminary Evaluation of Claim 721.
14. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2719 to the Claim and/or Preliminary Evaluation of Claim 721.
15. On May 8, 2000, John Briggs timely filed Contest 4469 to the Claim and/or Preliminary Evaluation of Claim 721.
16. On May 8, 2000, Peter M. Bourdet timely filed Contest 4704 to the Claim and/or Preliminary Evaluation of Claim 721.
17. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4937 to the Claim and/or Preliminary Evaluation of Claim 721.
18. On May 8, 2000, Thomas William Mallams timely filed Contest 5180 to the Claim and/or Preliminary Evaluation of Claim 721.
19. On May 8, 2000, Thomas H. Bentley timely filed Contest 5413 to the Claim and/or Preliminary Evaluation of Claim 721.
20. On May 8, 2000, Thomas E. Stephens timely filed Contest 5646 to the Claim and/or Preliminary Evaluation of Claim 721.

21. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3088 to the Claim and/or Preliminary Evaluation of Claim 721.
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 3088, the remaining contest to Claim 721. *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 721 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 October 14, 1935 and is based on Presidential Proclamation No. 2143, October 14, 1935.
28. 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. Based on the file and record herein, IT IS ORDERED that Claim 721 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 721

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 255

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

SOURCE OF WATER:
BROWNSWORTH CREEK, tributary to the SOUTH FORK SPRAGUE RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 15 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 370 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

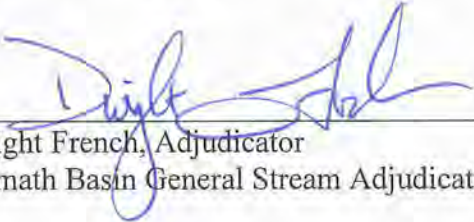
PERIOD OF ALLOWED USE: JANUARY 1 TO DECEMBER 31

DATE OF PRIORITY: OCTOBER 14, 1935

THE PLACE OF USE IS LOCATED AS FOLLOWS:
BROWNSWORTH CREEK FROM NENE, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 EAST, W.M., TO SENW, SECTION 2, TOWNSHIP 37 SOUTH, RANGE 15 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