

**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 722

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 504) 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. In a July 1, 1999 letter, OWRD requested clarification of Claim 504, 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 504 by submitting a two additional Statements and Proofs of Claim that covered certain portions of the original Claim 504. OWRD labeled these as Claim 719 and Claim 722. This Partial Order of Determination pertains only to Claim 722.
4. The August 3, 1999 Statement and Proof of Claim for Claim 722 amended two elements of the original Claim 504 that pertain to the Claim 722 stream reach. First, it changed the period of use from June 1 through November 15 to May 1 through November 15. Second, it increased the natural flow limits from 6.0 cfs to 6.3 cfs for the period November 1 to November 15. 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 722 was approved.
6. On May 5, 2000, the Claimant, USFS, timely filed Contest 2250 to the Preliminary Evaluation of Claim 722.
7. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 273 to the Claim and/or Preliminary Evaluation of Claim 722.
8. On May 1, 2000, Leonard Baio timely filed Contest 508 to the Claim and/or Preliminary Evaluation of Claim 722.
9. On May 2, 2000, Gary Strong timely filed Contest 743 to the Claim and/or Preliminary Evaluation of Claim 722.
10. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 978 to the Claim and/or Preliminary Evaluation of Claim 722.
11. On May 2, 2000, Robert Bartell timely filed Contest 1213 to the Claim and/or Preliminary Evaluation of Claim 722.
12. On May 2, 2000, Margaret Jacobs timely filed Contest 1447 to the Claim and/or Preliminary Evaluation of Claim 722.
13. On May 2, 2000, Carolyn Obenchain timely filed Contest 1682 to the Claim and/or Preliminary Evaluation of Claim 722.
14. On May 4, 2000, Rodney Z. James timely filed Contest 2031 to the Claim and/or Preliminary Evaluation of Claim 722.
15. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2483 to the Claim and/or Preliminary Evaluation of Claim 722.
16. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2720 to the Claim and/or Preliminary Evaluation of Claim 722.
17. On May 8, 2000, John Briggs timely filed Contest 4470 to the Claim and/or Preliminary Evaluation of Claim 722.
18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4705 to the Claim and/or Preliminary Evaluation of Claim 722.
19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4938 to the Claim and/or Preliminary Evaluation of Claim 722.

20. On May 8, 2000, Thomas William Mallams timely filed Contest 5181 to the Claim and/or Preliminary Evaluation of Claim 722.
21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5414 to the Claim and/or Preliminary Evaluation of Claim 722.
22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5647 to the Claim and/or Preliminary Evaluation of Claim 722.
23. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3089 to the Claim and/or Preliminary Evaluation of Claim 722.
24. 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.
25. 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).
26. On February 25, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 3089, the remaining contest to Claim 722. *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 2250) to Claim 722.
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.
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 722 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 722 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 722

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 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	36.0
June 1 to June 30	16.0
July 1 to July 31	6.1
Aug 1 to Aug 31	4.4
Sept 1 to Sept 30	4.6
Oct 1 to Oct 31	5.2


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