

**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 726

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 571) 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 571, 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 571 by submitting an additional Statement and Proof of Claim that covered a portion of the original Claim 571. OWRD labeled this as Claim 726.
4. The August 3, 1999 additional Statement and Proof of Claim for Claim 726 amended one element of the original Claim 571 that pertains to the Claim 726 reach. It changed the lower threshold for natural flow from 287 cfs to 281 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 726 was approved.
6. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 277 to the Claim and/or Preliminary Evaluation of Claim 726.
7. On May 1, 2000, Leonard Baio timely filed Contest 512 to the Claim and/or Preliminary Evaluation of Claim 726.
8. On May 2, 2000, Gary Strong timely filed Contest 747 to the Claim and/or Preliminary Evaluation of Claim 726.
9. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 982 to the Claim and/or Preliminary Evaluation of Claim 726.
10. On May 2, 2000, Robert Bartell timely filed Contest 1217 to the Claim and/or Preliminary Evaluation of Claim 726.
11. On May 2, 2000, Margaret Jacobs timely filed Contest 1451 to the Claim and/or Preliminary Evaluation of Claim 726.
12. On May 2, 2000, Carolyn Obenchain timely filed Contest 1686 to the Claim and/or Preliminary Evaluation of Claim 726.
13. On May 4, 2000, Rodney Z. James timely filed Contest 2035 to the Claim and/or Preliminary Evaluation of Claim 726.
14. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2487 to the Claim and/or Preliminary Evaluation of Claim 726.
15. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2724 to the Claim and/or Preliminary Evaluation of Claim 726.
16. On May 5, 2000, J.R. Simplot as Trustee of the J.R. Simplot Self-Declaration of Revocable Trust timely filed Contest 2775 to the Claim and/or Preliminary Evaluation of Claim 726.
17. On May 8, 2000, John Briggs timely filed Contest 4474 to the Claim and/or Preliminary Evaluation of Claim 726.
18. On May 8, 2000, Peter M. Bourdet timely filed Contest 4709 to the Claim and/or Preliminary Evaluation of Claim 726.
19. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4942 to the Claim and/or Preliminary Evaluation of Claim 726.

20. On May 8, 2000, Thomas William Mallams timely filed Contest 5185 to the Claim and/or Preliminary Evaluation of Claim 726.
21. On May 8, 2000, Thomas H. Bentley timely filed Contest 5418 to the Claim and/or Preliminary Evaluation of Claim 726.
22. On May 8, 2000, Thomas E. Stephens timely filed Contest 5651 to the Claim and/or Preliminary Evaluation of Claim 726.
23. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3093 to the Claim and/or Preliminary Evaluation of Claim 726.
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 010.
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 November 11, 2002, J.R. Simplot as Trustee of the J.R. Simplot Self-Declaration of Revocable Trust withdrew with prejudice Contest 2775. *See* STIPULATED MOTION FOR WITHDRAWAL OF CONTESTS 2772 AND 2775. (Nov. 11, 2002).
27. On March 10, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 3093, the remaining contest to Claim 726. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (March. 10, 2003).
28. On April 2, 2003, the Adjudicator withdrew Case 010 from the Office of Administrative Hearings.
29. The place of use underlying Claim 726 is within or borders a federal reservation of land that is owned by the Claimant.
30. 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. Except as described in the following sentence, this claim has a reservation date of April 15, 1961, and is based on the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961). OWRD finds that the portion of Claim 726 located in the NENE, NWNE, SWNE, AND

EAST ½ NW, SECTION 12 TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M has a reservation date of July 26, 1961, and is based on Presidential Proclamation No. 3423, July 26, 1961, 26 Fed. Reg. 6799 (1961).

31. The rate and the season of use claimed are no more than necessary to fulfill the primary purposes of the reservation.
32. The USFS's Claim 726 states that the beginning of the instream reach of the Sycan River is located in the NENE, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M. Although the USFS claim map (Mylar filed as Claim # 377, Page 223) shows this reach beginning at the north boundary of the NESW, OWRD finds that the beginning of the instream reach for this claim is SYCAN RIVER FROM NENE, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 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. 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 beginning of the instream reach for this claim is the north boundary of the NENE, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENTS OF CLAIMS is incorporated as if set forth fully herein.
5. 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 726 for consideration in this Findings of Fact and Partial Order of Determination.
6. Based on the file and record herein, IT IS ORDERED that Claim 726 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 726

CLAIM MAP REFERENCE: MYLAR FILED AS CLAIM # 377, PAGE 223 and PAGE 224

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

SOURCE OF WATER: SYCAN RIVER, tributary to the SPRAGUE RIVER

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

RATE: NATURAL FLOW FROM A TRIGGER FLOW OF 281 CUBIC FEET PER SECOND (CFS) TO A CAP FLOW OF 3552 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:

APRIL 15, 1961 – SYCAN RIVER FROM TO NORTH BOUNDARY OF NESW, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M. TO SWSE, SECTION 31, TOWNSHIP 34 SOUTH, RANGE 12 EAST, W.M.


JULY 26, 1961 – SYCAN RIVER FROM NORTH BOUNDARY OF NENE, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M. TO SOUTH BOUNDARY OF SENW, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SYCAN RIVER FROM NENE, SECTION 12, TOWNSHIP 34 SOUTH, RANGE 11 EAST, W.M., TO SWSE, SECTION 31, TOWNSHIP 34 SOUTH, RANGE 12 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