

**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 727

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 572) 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 572, 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 572 by submitting an additional Statement and Proof of Claim that covered a portion of the original Claim 572. OWRD labeled this as Claim 727.
4. The August 3, 1999 Statement and Proof of Claim for Claim 727 amended two elements of the original Claim 572 that pertain to the Claim 727 stream reach. First, it changed the period of use from 70.0 cfs to 113.0 cfs for June 1 to June 30, 5.8 cfs to 21.0 cfs for July 1 to July 31, 0.0 cfs to 10.0 cfs for Aug. 1 to Aug. 31, 0.0 cfs to 13.0 cfs for Sept. 1 to Sept. 30, 6.9 cfs to 17.0 cfs for Oct. 1 to Oct. 30, and 6.1 cfs to 22.0 cfs for Nov. 1 to Nov. 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 727 was approved.
6. On May 5, 2000, the Claimant, USFS, timely filed Contest 2253 to the Preliminary Evaluation of Claim 727.
7. On May 1, 2000, William J. Rust and Ethel J. Rust timely filed Contest 278 to the Claim and/or Preliminary Evaluation of Claim 727.
8. On May 1, 2000, Leonard Baio timely filed Contest 513 to the Claim and/or Preliminary Evaluation of Claim 727.
9. On May 2, 2000, Gary Strong timely filed Contest 748 to the Claim and/or Preliminary Evaluation of Claim 727.
10. On May 2, 2000, the Flynn Brothers (Con and Nora Flynn), and Con, Nora and John Flynn timely filed Contest 983 to the Claim and/or Preliminary Evaluation of Claim 727.
11. On May 2, 2000, Robert Bartell timely filed Contest 1218 to the Claim and/or Preliminary Evaluation of Claim 727.
12. On May 2, 2000, Margaret Jacobs timely filed Contest 1452 to the Claim and/or Preliminary Evaluation of Claim 727.
13. On May 2, 2000, Carolyn Obenchain timely filed Contest 1687 to the Claim and/or Preliminary Evaluation of Claim 727.
14. On May 4, 2000, Rodney Z. James timely filed Contest 2036 to the Claim and/or Preliminary Evaluation of Claim 727.
15. On May 5, 2000, Newman Enterprise (Douglas Newman) timely filed Contest 2488 to the Claim and/or Preliminary Evaluation of Claim 727.
16. On May 5, 2000, Francis Loving Trust, Hilda Francis Trustee timely filed Contest 2725 to the Claim and/or Preliminary Evaluation of Claim 727.
17. On May 5, 2000, J.R. Simplot as Trustee of the J.R. Simplot Self-Declaration of Revocable Trust timely filed Contest 2776 to the Claim and/or Preliminary Evaluation of Claim 727.

18. On May 8, 2000, John Briggs timely filed Contest 4475 to the Claim and/or Preliminary Evaluation of Claim 727.
19. On May 8, 2000, Peter M. Bourdet timely filed Contest 4710 to the Claim and/or Preliminary Evaluation of Claim 727.
20. On May 8, 2000, Vincent Lee Briggs timely filed Contest 4943 to the Claim and/or Preliminary Evaluation of Claim 727.
21. On May 8, 2000, Thomas William Mallams timely filed Contest 5186 to the Claim and/or Preliminary Evaluation of Claim 727.
22. On May 8, 2000, Thomas H. Bentley timely filed Contest 5419 to the Claim and/or Preliminary Evaluation of Claim 727.
23. On May 8, 2000, Thomas E. Stephens timely filed Contest 5652 to the Claim and/or Preliminary Evaluation of Claim 727.
24. On May 8, 2000, Waterwatch of Oregon, Inc. timely filed Contest 3094 to the Claim and/or Preliminary Evaluation of Claim 727.
25. 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.
26. On April 23, 2002, the USFS executed STIPULATION REGARDING PRIORITY DATE FOR CLAIM 727, to correct a scrivener's error in the Preliminary Evaluation, whereby the priority date was incorrectly stated as October 14, 1935. The Stipulation provides a priority date of April 15, 1961. Except as described in the following sentence, OWRD finds that the April 15, 1961 priority date is correct. OWRD finds that the portion of Claim 727 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; these lands are not listed in the "Proclamation Taking Title to Certain Lands. . ." April 15, 1961, Federal Register, 26 Fed. Reg. 3251-3254 (1961) but are listed on Presidential Proclamation No. 3423, July 26, 1961, 26 Fed. Reg. 6799 (1961).
27. 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).

28. On November 11, 2002, J.R. Simplot as Trustee of the J.R. Simplot Self-Declaration of Revocable Trust withdrew with prejudice Contest 2776. *See* STIPULATED MOTION FOR WITHDRAWAL OF CONTESTS 2773 AND 2776. (Nov. 11, 2002).
29. On February 25, 2003, Waterwatch of Oregon, Inc. voluntarily withdrew Contest 3094. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTESTS (Feb. 25, 2003).
30. 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 2253) to Claim 727.
31. On April 2, 2003, the Adjudicator withdrew Case 009 from the Office of Administrative Hearings.
32. The Preliminary Evaluation for Claim 727 contains a scrivener's error which was incorporated into the Settlement Agreement, whereby Township 34 South was incorrectly listed as Township 31 South.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and USFS is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. the portion of Claim 727 located from the 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. has a priority date of July 26, 1961 as described in Finding 26, above; and
 - b. the scrivener's error in the township number in the Preliminary Evaluation which was incorporated into the Settlement Agreement as described in Finding 32, above; the township is corrected to Township 34 South.
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 727 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 727 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 727

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 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	357.0
June 1 to June 30	113.0
July 1 to July 31	21.0
Aug 1 to Aug 31	10.0
Sept 1 to Sept 30	13.0
Oct 1 to Oct 31	17.0

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