

**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)	PARTIAL ORDER OF
S. E. COLLINS, RONALD COLLINS, AND)	DETERMINATION
TEZEA COLLINS)	
_____)	Water Right Claim 73

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 January 25, 1991, RICHARD H. AND LOIS M. OUTCALT timely submitted a Statement and Proof of Claim (Claim 73) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 73 was submitted for livestock watering of 25 head, and a total of 0.33 cubic feet per second (cfs) of water from the Sprague River, a tributary of the Williamson River, for irrigation of 13.2 acres with a “June – October” season of use, at a rate of 1/40 of one cubic foot per second per acre, and a duty of 3.0 acre-feet per acre. The claimed priority date is 1864.
3. An attachment to the Statement and Proof of Claim states in pertinent part, “[t]his land was owned by the Eggsman family who are Indians. Neva and Wilber Eggsman sold it to Walter Eggsman 16 December 1953, who sold it to Gerald and Diane Basset, who were not Indian, on 19 October 1976. We [Outcalts] bought the land from them on 5 June 1978. . . . The following summer, August 11, 1979, we turned on the pump and started watering this land from the Sprague River, and have been irrigating every season since.” (Claim # 73, Page 23).
4. RICHARD H. OUTCALT signed the Statement and Proof of Claim for Claim 73 attesting that the information contained in the claim is true.

5. The original claimants did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.
6. The property appurtenant to Claim 73 was subsequently acquired by S. E. COLLINS, RONALD COLLINS, AND TEZEA COLLINS (Claimants).
7. In 1991, a field inspection report was prepared by a private engineer or surveyor, describing in writing the present use of water on the property as stated in the Claim 73 (Claim # 73, Page 30). However, the map included with the report, "Adjudication Claims Map" (Claim # 73, Page 31), clearly shows on an outage of 0.3 acres for buildings, and shows a total of 12.9 irrigated acres; the map does not show 13.2 acres as described in writing in the report and as claimed in the Statement and Proof of Claim.
8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres and with a longer period of use than claimed.
9. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 73.
10. Based on the "Adjudication Claims Map" referred to in Finding 7, above, OWRD finds irrigation of 7.5 acres in the NENE, Section 21, and not 7.8 acres as claimed; the map clearly shows on an outage of 0.3 acres for buildings and irrigation of 7.5 acres. Thus, for Claim 73 OWRD finds a total of 12.9 irrigated acres rather than 13.2 acres as claimed in the Statement and Proof of Claim (Claim 73).
11. Based on sworn statements made in the Statement and Proof of Claim, OWRD finds a rate for irrigation of 1/40 of one cubic foot per second per acre, a duty of 3.0 acre-feet per acre per year, and a season of use of June 1st through October 31st, as claimed.
12. Based on the sworn statements in Claim 73, along with the field inspection report, the following findings are made:
 - a. The claimed water use is on former Klamath Indian Reservation Land.
 - b. The claimed water use is on land that was transferred from Indian ownership.
 - c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

B. DETERMINATION

1. The elements of a Walton claim are established with respect to the portion of the claim for irrigation. Water was beneficially used for irrigation of 12.9 acres within three years of transfer from Indian ownership. This constitutes reasonable diligence given the facts pertaining to the claim. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

2. The season of use for irrigation is June 1st through October 31st, as claimed. .
3. The duty for irrigation is 3.0 acre-feet per acre per year as claimed.
4. The rate for irrigation is 1/40 of one cubic foot per second per acre as claimed.
5. Claimants' claim for a separate right of use for livestock watering is denied, because Claimants failed to timely submit fees for livestock use. ORS 539.210 provides that "it shall be the duty of all claimants . . . to appear and submit proof of their respective claims, *at the time and in the manner required by law.*" (Emphasis added) Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings." ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For Claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. Because OWRD did not receive payment for a separate right of use for livestock watering by the deadline, this portion of Claimants' claim must be denied. Livestock watering approved under Claim 73 must be limited to incidental livestock watering during the irrigation season.
6. Based on the file and record herein, IT IS ORDERED that Claim 73 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 73

CLAIM MAP REFERENCE: CLAIM # 73, PAGE 31

CLAIMANTS: S. E. COLLINS; RONALD COLLINS; TEZEA COLLINS
PO BOX 669
CHILOQUIN OR 97624

SOURCE OF WATER: The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE or USE:

IRRIGATION OF 12.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 25 HEAD.

RATE OF USE:

0.322 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: JUNE 1 – OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

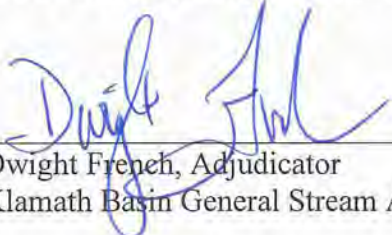
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	8 E	WM	21	SE NE	1890 FEET SOUTH & 960 FEET WEST FROM NE CORNER, SECTION 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	21	NE NE	7.50
34 S	8 E	WM	21	SE NE	5.40

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication