

**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)
COLESTIN ORGANIC FARM) PARTIAL ORDER OF
) DETERMINATION
)
) Water Right Claim 225

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 28, 1991, SS BAR RANCH; FRED MARKEN timely submitted a Statement and Proof of Claim (Claim 225) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 225 was submitted for a total 2.14 cubic feet per second (cfs) of water from East Fork Cottonwood Creek, a tributary of the Klamath River, being 1 cfs for livestock watering of 75 - 100 head, and 1.14 cfs for irrigation of 45.7 acres, with a season of use "March 1 to October 30." The claimed priority date is 1854.
3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit E," a copy of a newspaper article from THE MAIL TRIBUTE, EXTRA, SISKIYOU COUNTY, ISSUE No. 498, DEC. 17-23, 1987, which states in pertinent part: "It was 100 years ago today, Dec 17, 1887, that the last stage coach pulled out of Cole's Station headed for Oregon. The large 6,000 acre ranch was started by Rufus Cole and his brother Byron in 1851 in a small valley just south of the Oregon border in Siskiyou County . . . Cole's Station, known in recent years as the SS Bar Ranch. . . ." (Claim # 225, Page 020).
4. FRED MARKEN signed the Statement and Proof of Claim for Claim 225 attesting that the information contained in the claim is true.
5. In 1980, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 225. The report also includes the statement, "They explained the ranch house was a historical [sic] site. There was a sign in front of it which said; 'Stage Coach Station COLE'S 1854-1887 Last south bound stage left on December 17, 1887.' . . . Their purpose was to indicate that there was use of the

meadows for pasture for the stock during the time of the stage lines.” (Claim 225, Page 018 - 019).

6. On December 11, 1998, the Claimant supplemented information to Claim 225 and clarified that the livestock watering season of use is “Nov. thru March” (Claim # 225, Page 0028).
7. According to a letter received on April 29, 1999, from Ilona Toko, the name of SS BAR RANCH was subsequently changed to COLESTIN ORGANIC FARM (Claimant) (Claim # 225, Page 0033).
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 a smaller quantity of water for livestock watering than claimed and with a longer season of use than claimed.
9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3207 to the Claim and/or Preliminary Evaluation of Claim 225.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 23.
11. On January 2, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3207. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 2, 2002).
12. On February 21, 2002, Contest 3207 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 21, 2002).
13. Based on the sworn statements in Claim 225, along with the field inspection report, the following findings are made:
 - a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.
 - b. The Claimant created a diversion, where necessary, to divert water from its natural source.
 - c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
2. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
3. The total rate of water for livestock use is based on 100 head, the maximum number of head claimed by the Claimant.
4. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
5. Based on the file and record herein, IT IS ORDERED that Claim 225 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 225

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAPS – T 41 S, R 1 E, W.M.; and
T 41 S, R 2 E, W.M. & T 48 N, R 7 W, M.D.M.

CLAIMANT: COLESTIN ORGANIC FARM

177 E 11TH ST
CHICO, OR 95928-5728

SOURCE OF WATER: EAST FORK COTTONWOOD CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE:

IRRIGATION OF 45.7 ACRES AND LIVESTOCK WATERING OF 100 HEAD.

RATE OF USE:

1.142 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.14 CFS FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION; AND

0.002 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1200 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY

NECESSARY TO TRANSPORT THE WATER AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 30
Livestock Watering	November 1 - March 31

DATE OF PRIORITY: DECEMBER 31, 1854

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

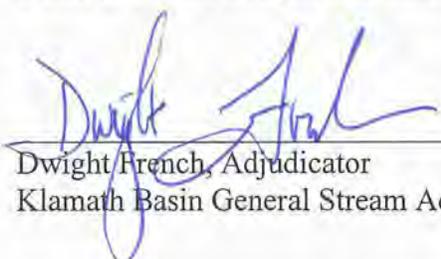
Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	1 E	WM	13	SW NE	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
48 N	7 W	MDM	15	SE SW	3	5.20
48 N	7 W	MDM	15	SW SE	2	2.40
48 N	7 W	MDM	22	NW NE		17.80
48 N	7 W	MDM	22	SW NE		16.30
48 N	7 W	MDM	22	NE NW		2.70
48 N	7 W	MDM	22	NW SE		1.30

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication