

**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
CLIFF L. AMBERS, AND	)	DETERMINATION
JUDY E. AMBERS	)	
_____	)	
	)	Water Right Claim 28

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS  
TO THE PROPOSED ORDER**

1. Claim 28 and its associated contests (32, 3441, 3726, and 4085) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 173.
2. CLIFF L. AMBERS conveyed an undivided one-half interest in the property appurtenant to Claim 28 to his wife, JUDY E. AMBERS (Claimants) (7120 WOCUS RD, KLAMATH FALLS, OR 97601). *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M98, PAGES 4387, Feb. 9, 1998 (Claim # 28, Page 016).
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on October 24, 2003, denying Claim 28.
4. No exceptions were filed to the Proposed Order.
5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.6, below.
6. **Opinion.**
  - a. Within the section titled "Opinion" of the Proposed Order, OWRD removed the ALJ's discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

- b. Within the section titled "Opinion" of the Proposed Order, the two paragraphs immediately preceding the final paragraph in the "Opinion" are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Even though the claim appears to be based upon natural irrigation or overflow, the requirement of demonstrating beneficial use of water is not eliminated. The greater weight of the evidence has to establish that natural irrigation or overflow was put to beneficial use by the Indian owner or if not, that beneficial use of water was made with reasonable diligence by ~~the first~~ non-Indian successors following transfer from Indian ownership. There is no evidence of when (or if) water by the method of natural overflow was put to beneficial use.

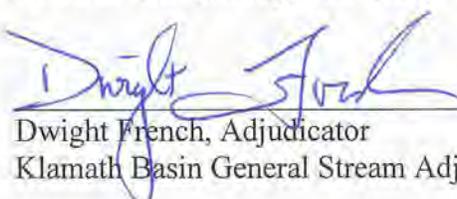
Even though a Walton right may include water use based on the Indian allottee's undeveloped irrigable land to the extent that ~~the additional~~ water use is developed put to beneficial use with reasonable diligence ~~by the first purchaser~~ following transfer of the land from an Indian owner to non-Indian successors, there is a no evidence establishing that beneficial use of the waters claimed was occurring on the property at the time of transfer from Indian ownership, or that beneficial use of water use was developed made with reasonable diligence by the ~~first~~ non-Indian owner successors following transfer from Indian ownership. Mr. Ambers did not provide testimony or offer exhibits to support his claim and has not met his burden of proving that he has a valid Walton water right in Claim 28.

**Reason for Modifications:** To correct and clarify the elements of a *Walton* water right and to apply the appropriate legal bases to the Proposed Order's findings of fact.

## B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.6, above.
2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 28 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication