

**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
THOMAS J. SHAW)	DETERMINATION
_____)	
)	Water Right Claim 32

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 32 (Claimant: THOMAS J. SHAW, PO BOX 257, KLAMATH FALLS, OR 97601) and its associated contests (2041, 3444, 3729, and 4088) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 176.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER ON STIPULATION BY PARTICIPANTS FOR RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT’S CLAIM (Proposed Order) on April 15, 2005, denying Claim 32.
3. No exceptions were filed to the Proposed Order.
4. The STIPULATION OF FACTS for Claim 32 executed on February 21, 2005 is incorporated in its entirety as if set forth fully herein.
5. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled “Order” is adopted with modifications, as set forth in Section A.6, below. The outcome of the Order is without modification.
6. **Order.** The Proposed Order’s “Order” section is modified as follows (additions are shown in “underline” text, deletions are shown in “~~striketrough~~” text):

Based on the facts as set forth in the Stipulation of Facts in Exhibit A; ~~and the legal rulings in the Order in Exhibit B:~~

~~(1) An irrigation claim based on natural overflow and sub irrigation is not entitled as a matter of law to a Walton Right. Beneficial use of water for the claimed purposes of irrigation and livestock watering was not made with reasonable diligence following transfer from Indian ownership.~~

(2) A claim for wildlife purpose of use is not entitled as a matter of law to a Walton right.

(3) Claimant's Claim No. 32 is dismissed.

Reasons for Modifications:

- (1) The PROPOSED ORDER ON THE UNITED STATES' MOTION FOR RECONSIDERATION AND RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S Claim issued in Case No. 176, December 10, 2004 (Exhibit B), does not provide the basis on which this claim is dismissed by the Adjudicator. Therefore, the Adjudicator modifies the Proposed Order by striking any reference to Exhibit B.
- (2) The basis on which Claim 32 should be dismissed is corrected. The Adjudicator modifies the Proposed Order with the following facts and conclusions of law:
 - a. The stipulated facts show that there is an eight year gap between the time that the lands appurtenant to Claim 32 were first transferred to non-Indian ownership from Indian ownership (1957) and the initiation of a lease to the same lands for livestock pasture (1965).
 - b. The stipulated facts do not support beneficial use of water with reasonable diligence. Because the use of water on lands appurtenant to claim 32 relies upon natural overflow and natural subirrigation and there is no actual physical diversion of water from its natural source, eight years to apply water to beneficial use for irrigation or livestock watering is not considered reasonably diligent.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Order" is adopted with modifications, as set forth in Section A.6, above. The outcome of the Order is without modification.
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 32 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