

**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 YEUGENY KAPLUN; LUBA KAPLUN; WILLIAM G. SHAFFER; MARUEEN SHAFFER;)	PARTIAL ORDER OF DETERMINATION
DENNIS E. ODELL; PHYLLIS C. ODELL;)	
HARRY E. FUQUA II; THOMAS E. MCKELVEY; SALLY MCKELVEY;)	Water Right Claim 54
MCMANUS FAMILY TRUST; DANIEL WARREN; MARY LEZOTTE; GEORGE R. PEDRANTI, JR; SHARON PEDRANTI;)	
YOSHITAKA K. TANIGUCHI; KEIKO TANIGUCHI; JAMES E. ELLIS; KAREN L. ELLIS; ELLIS FAMILY TRUST;)	
GILBERT L. THOMPSON; JEAN THOMPSON; H. DEBORAH MORUSS;)	
DAVID BARTA, LYDIA BARTA; DAVID T. GARRETT; ANN M. GARRETT;)	
THOMAS A. HENDERSON; YVONNE HENDERSON; SCHERL FAMILY TRUST;)	
RICHARD J. SWIATKOWSKI; JOAN SWIATKOWSKI; DAVID J. SCHRODI;)	
JOAN B. SCHRODI, CHARLES E. COKER; AND BONGERZ FAMILY TRUST)	

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 54 and its associated contests (3797 and 4109) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 188.
2. The property appurtenant to Claim 54 was ultimately transferred to YEUGENY KAPLUN AND LUBA KAPLUN (2040 W MIDDLEFIELD RD 16, MOUNTAIN VIEW, CA 94030); WILLIAM G. SHAFFER AND MAUREEN SHAFFER (4505 COSTA DE ORO, OXNARD, CA 93035); DENNIS E. ODELL AND PHYLLIS C. ODELL (1837 TIOGA WAY, SAN JOSE, CA 95124); HARRY E. FUQUA II (24629 STONEGATE DR, WEST HILLS, CA 91304); THOMAS E. MCKELVEY AND SALLY MCKELVEY (341 SARATOGA GLEN, ESCONDIDO, CA 92025); MCMANUS FAMILY TRUST (23561 E COYOTE SPRINGS DR,

DIAMOND BAR, CA 91765); DANIEL WARREN AND MARY LEZOTTE (1519 COWPER COURT, SAN JOSE, CA 95120); GEORGE R. PEDRANTI, JR AND SHARON PEDRANTI (4111 WAKFIELD LOOP, FREMONT, CA 94535); YOSHITAKA K. TANIGUCHI AND KEIKO TANIGUCHI (3109 PEPITA CT, SAN JOSE, CA 95132); JAMES E. ELLIS, KAREN L. ELLIS AND ELLIS FAMILY TRUST (25662 BRADFORD LANE, LAGUNA HILLS, CA 92653); GILBERT L. THOMPSON AND JEAN THOMPSON (5762 MIDDLECOFF DR, HUNTINGTON BEACH, CA 92647); H. DEBORAH MORUSS (6141 CHOCTAW DR, WESTMINSTER, CA 92683); DAVID BARTA AND LYDIA BARTA (2376 WALDEN SQUARE, SAN JOSE, CA 95124); DAVID T. GARRETT AND ANN M. GARRETT (12801 DESERT SKY AVE NE, ALBUQUERQUE, NM, 87111); THOMAS A. HENDERSON AND YVONNE HENDERSON (1575 GAZLEY, MYRTLE CREEK, OR 97457); SCHERL FAMILY TRUST (11215 POCHE PT, SAN DIEGO, CA 92131); RICHARD J. SWIATKOWSKI AND JOAN SWIATKOWSKI (14038 ARBOLITOS DR, POWAY, CA 92064); DAVID J. SCHRODI AND JOAN B. SCHRODI (847 NISQUALLY DR, SUNNYVALE, CA 94087); CHARLES E. COKER (24334 DALE DR, LAGUNA HILLS, CA 92653); AND BONGERZ FAMILY TRUST (2544 BUENA FLORES, FALLBROOK, CA 92028)(Claimants) from ELI PROPERTY COMPANY, which acquired the property from the original claimants, RICHARD E. SIEMENS AND THEODORE E. SIEMENS, DBA SIEMENS FARMS).

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR LEGAL RULING; PROPOSED ORDER DENYING CLAIM on March 11, 2005 (Proposed Order).
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 two exceptions: (1) the “Findings of Fact” is adopted with modifications, as set forth in Section A.6, below, and (2) the section titled “Opinion” is adopted with modifications, as set forth in Section A.7, below.
6. **Findings of Fact.** The third sentence in the first paragraph of Proposed Order Finding of Fact #2 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

“An agent for the developer, ~~Cory Engel~~ Carry Penn, stated that the agricultural land has been taken out of use and developed into residential property.”

Reason for Modification: This statement was made by Carry Penn of Eli Property Company; Cory Engel was an employee of OWRD. (OWRD Ex. 1 at 81.)

7. **Opinion.** Within the subsection titled “Walton Water Right Claim,” 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.

In addition, OWRD has modified the final paragraph of the Opinion section as follows (additions are shown in “underline” text):

Claimants are deemed to have admitted, among other things, that they cannot establish the elements of a *Walton* right. Further, Claimants have admitted that

they cannot establish the extent of irrigation, if any under Indian ownership, or the date of transfer from Indian ownership. Finally, the Claimants are deemed to have admitted that they have no intent to prosecute the water right claim, and thereby have effectively withdrawn the claim from further consideration. Therefore, Claimants in Claim 54 have failed to prove the basic elements of a *Walton* water right and, consequently, Claim 54 should be denied.

Reason for Modifications: To correct and clarify the elements of a Walton water right; to provide additional detail concerning the bases for denial of the claim.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above, and (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, 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 54 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