

**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 |
| GEORGE DOUGAN, AND |) | DETERMINATION |
| RUTH DOUGAN |) | |
| _____ |) | |
| |) | Water Right Claim 118 |

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 118 and its associated contests (1694, 3494, 3761, and 4148) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 228.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM on March 28, 2005 (Proposed Order).
3. No exceptions were filed to the Proposed Order.
4. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with three exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.5.a, below. In addition, Proposed Order Findings of Facts #11 is added as set forth in Section A.5.b, below; and (2) the "Opinion" is adopted with modifications, as set forth in Section A.6, below.
5. **Findings of Fact.**
 - a. Proposed Order Finding of Fact #4 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):
 4. On November 18, 2003, Administrative Law Judge (ALJ) William D. Young held a prehearing conference, pursuant to written notice sent to participants. (See Order Requiring Prehearing Statements, Case 228, Claim 118, dated August 15, 2003.) Claimant George Dougan participated in the prehearing conference, ~~but~~ and did not file a prehearing statement with the

Office of Administrative Hearings on November 3, 2003. (See Letter to Parties and Counsel, Case 228, Claim 118, dated November 19, 2003, and Letter to William D. Young from George Dougan, dated October 31, 2003.)

Reason for Modification: The ALJ's finding with respect to the Claimant not filing a prehearing statement is not supported by a preponderance of evidence on the record.

b. Proposed Order Findings of Facts #11 is added as follows (additions are shown in "underline" text):

11. Water was not applied to beneficial use during Indian ownership of the claimed lands.

Reasons for Additional Findings of Facts: The ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

6. **Opinion.**

a. 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.

b. Within the subsection titled "Walton Water Right Claim" the last paragraph is modified as follows (additions are shown in "underline" text):

Claimants are deemed to have admitted, among other things, that the claimed place of use has not been irrigated every year since the property left Indian ownership; that Claimants failed to provide sufficient chain of title documentation regarding ownership of the claimed place of use after it left Indian ownership; and that Claimants failed to provide sufficient information to show the amount of land irrigated by the first non-Indian owner within five years after owning the allotments in issue. In addition, considering the record in a manner most favorable to the non-moving party, the record does not establish that water was beneficially used on the lands appurtenant to Claim 118 prior to the transfer from Indian ownership. When combined with the deemed admission that Claimants have not provided sufficient chain of title documents to determine the first non-Indian owner for each allotment within the claimed place of use, Therefore, Claimants cannot establish each element

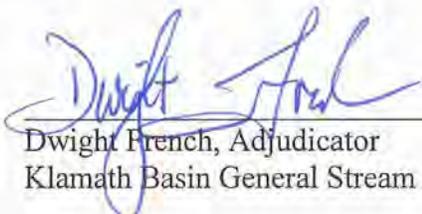
of a Walton water right. Consequently, Claimants in Claim 118 have failed to prove the basic elements of a Walton water right and Claim 118 should be denied.

Reasons for Modifications: To correct and clarify the elements of a Walton water right and to provide clarity of the basis for the denial based on evidence on the record.

B. DETERMINATION

1. The Proposed Order adopted and incorporated in its entirety as if set forth fully herein, with three exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.5.a, above. In addition, Proposed Order Findings of Facts #11 is added as set forth in Section A.5.b, above; and (2) the "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 118 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