

**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 |
| ERROL HATCHER |) | DETERMINATION |
| |) | |
| _____ |) | Water Right Claim 246 |

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

A. FINDINGS OF FACT

1. Claim 246 (Claimant: ERROL HATCHER, PO BOX 564, CHILOQUIN, OR 97624) and its associated contests (1727 and 3530) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 64.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER BY DEFAULT (Proposed Order) on November 10, 2005, denying Claim 246.
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 the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.5, below.
5. **Opinion.** The following text is added at the end of the Proposed Order's "Opinion" section:

It is theoretically possible that the current owner could establish a *Walton* water right claim, even though the Indian Allottee claim must be denied. In this case, however, there is insufficient evidence to support a *Walton* claim.

OWRD incorporates into this Opinion sections the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

The only evidence pertaining to ownership of the property underlying the claimed place of use is that the property was owned by a member of the Klamath Tribes as of January 31, 1991, that the property was sold at some point after that date, and that there is no evidence that the successor-in-interest is a member of the Klamath Tribes.

There is no evidence of diligent development of the use of water on the property following the change in ownership. As a result, the property may have been out of Indian ownership for more than fourteen years by the time the cross-examination hearing in this matter took place. Under the circumstances in this case, this does not constitute reasonably diligent development of the use of water, a required element for establishing a *Walton* right on practicably irrigable acreage.

Because the Claimant has failed to establish a water right under either an Indian Allottee or a *Walton* theory, Claim 246 is denied.

Reason for Modifications: To apply the facts in the case to the *Walton* elements

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.5, above.
2. The elements of an Allottee claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 246 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