

**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
ORIN KIRK	)	DETERMINATION
_____	)	
	)	Water Right Claim 695

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 695 (Claimant: ORIN KIRK, PO BOX 1079, CHILOQUIN, OR 97624) and its associated contests (1765, and 3575) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 94.
2. On May 6, 2003, Claim 695 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” See ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
3. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
4. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 3, above). See ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on October 3, 2006, denying Claim 695.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by Klamath Project Water Users.<sup>1</sup>
7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 695. The issues raised in the exceptions do not require any modifications to the Proposed Order.
8. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “Conclusions of Law” is adopted with modifications as set forth in Section A.6, below, and (2) the section titled “Opinion” is adopted with modification as set forth in Section A.7, below. The outcome of the Order has not been modified.
9. **Conclusions of Law.** Conclusion of Law 8 in the “Conclusions of Law” section of the Proposed Order is modified as follows (deletions are shown in ~~striketrough~~):

The claim is not to a source that was previously adjudicated and the claimant does ~~not~~ present issues that can be legally determined.

**Reason for Modification:** To correct a typographical error.

10. **Opinion.** The part of the “Conclusions of Law” section of the Proposed Order beneath the header titled “The required elements are not established for an Allottee water right with a priority date of October 14, 1864” is modified as follows (deletions are shown in ~~striketrough~~; additions are shown in underline):

Throughout these proceedings it has been asserted by claimant that the title documents filed with the claim establish that the property subject to this claim was part of the Klamath Indian Reservation, and conveyed out of trust by the United States to claimant’s Indian predecessors after the Wood River Adjudication. Those documents do not, however make that case.

The property in question is located in Section 30, Township 34 S, Range 7 E Willamette Meridian. The title documents filed with the claim, however, refer to property located in Sections 7 or 12 of Township 32 S, Range 8 E Willamette Meridian. This includes both the Title Report issued by Klamath County Title

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<sup>1</sup> The KPWU contestants in this proceeding are: Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC.

Company, (Ex. 1 at 15, 16.) and the Land Status Report by the Superintendent of the Klamath Agency (Ex. 1 at 20, 21.). These documents make statements by claimant's attorney concerning the history of Indian ownership of the parcel and the parcel's location within the former Klamath Indian Reservation, which are based on the title documents filed with the claim, unreliable and not entitled to significant weight. Thus, ~~there is no title evidence connected with the property subject to this claim to be found anywhere in the record in this case.~~ Without ~~that~~ substantial evidence concerning these issues, it cannot be found either that the property was part of the Klamath Indian Reservation or that an Allottee right on the property was not lost due to a period of non-Indian ownership ~~it was held in continuous Indian ownership up to the present day.~~ Both of these facts must be found to establish a water right by an Indian allottee. The absence of any evidence on these elements is fatal to the claim.

**Reasons for Modifications:** To clarify the evidence in the record pertaining to the ownership history of the property; to make the legal conclusions consistent with the GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS.

## B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Conclusions of Law" is adopted with modifications as set forth in Section A.6, above, and (2) the section titled "Opinion" is adopted with modification as set forth in Section A.7, above. The outcome of the Order has not been modified.
2. The elements of a pre-1909 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 695 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