

**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 258

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 258 (Claimant: ORIN KIRK, PO BOX 1079, CHILOQUIN, OR 97624) and its associated contests (1735 and 3540) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 57.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER BY DEFAULT (Proposed Order) on March 17, 2006 denying Claim 258.
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 first two paragraphs of the "Opinion" section of the Proposed Order are adopted and incorporated herein. The remainder of the "Opinion" is replaced with the following:

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 fifteen 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 258 is denied.

Reason for Modifications: To correct and clarify the elements of a *Walton* water right; to apply the facts in the case to the corrected *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 258 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