

**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 696

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 696 (Claimant: ORIN KIRK, PO BOX 1079, CHILOQUIN, OR 97624) and its associated contests (1766 and 3576) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 95.
2. On May 6, 2003, Claim 696 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 BY DEFAULT (Proposed Order) on January 18, 2006, denying Claim 696.
6. No exceptions were filed to the Proposed Order.
7. 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.8, below.
8. **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 696 is denied.

**Reason for Modifications:** 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.8, 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 696 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

  
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Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication