

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application )  
T-13673, Klamath County )  
)  
)

**REVISED** FINAL ORDER APPROVING  
TEMPORARY CHANGES IN PLACE OF USE  
AND POINTS OF DIVERSION

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 and 445 Oregon Laws (2015) Sections 1 and 2 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion authorized under an existing water right.

Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 183.484(4) governs orders on reconsideration after a petition for review is filed.

**Applicant**

THOMAS FAMILY LIMITED PARTNERSHIP  
2500 VENTURE OAKS WAY, SUITE 175  
SACRAMENTO, CA 95833

**Findings of Fact**

1. On April 20, 2021, THOMAS FAMILY LIMITED PARTNERSHIP filed an application to temporarily change the place of use and points of diversion to serve the proposed place of use under Klamath Basin Adjudication Determined Claim KA-67 for a period of 5 years. The Department assigned the application number T-13673.
2. On April 26, 2021, the applicant's agent submitted a revised Table 1, adding the North Canal as a proposed point of diversion.
3. Notice of the application for transfer was published on May 4, 2021, pursuant to OAR 690-380-4000. The Department received two comments in response to the notice.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On July 13, 2021, the Department determined that there were some acres that cannot be dried up, and that those lands should be excluded from the transfer.
5. On August 9, 2021, the Department received revised tables and maps, removing 248.7 acres from the transfer.
6. On August 26, 2021, the Department issued a Final Order as evidenced in (Special Order Volume 121, Page 433), approving temporary changes in place of use and points of diversion under T-13673.
7. On October 4, 2021, the Department reconsidered its final order and determined a revised Final Order was necessary, to include a change in point of diversion condition.
8. The claim to be temporarily transferred is as follows:

**Claim:** KA-67 in the name of THOMAS FAMILY LIMITED PARTNERSHIP  
**Use:** IRRIGATION of 1251.8 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 3400 HEAD, BEING 590.3 ACRES FROM WOOD RIVER PODS 1 AND 2, AND 661.5 ACRES FROM CROOKED CREEK POD  
**Priority Date:** OCTOBER 14, 1864  
**Rate:** 25.04 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 12.02 CFS FROM POINTS OF DIVERSION (POD) #1 AND #2, AND 13.02 CFS FROM POD #3; THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR  
**Duty:** 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR  
**Season of use:** APRIL 1 THROUGH OCTOBER 1  
**Sources:** POD #1 AND #2: WOOD RIVER, tributary to AGENCY LAKE; POD#3: CROOKED CREEK, tributary to AGENCY LAKE

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7.5 E	WM	14	NW NW	5	WOOD RIVER POD 1 (HEADGATE) - 30 FEET SOUTH AND 2450 FEET WEST FROM THE N¼ CORNER OF SECTION 14
34 S	7.5 E	WM	14	NW NW	5	WOOD RIVER POD 2 (PUMP) - 45 FEET SOUTH AND 2450 FEET WEST FROM THE N¼ CORNER OF SECTION 14
34 S	7.5 E	WM	13	NW SE		CROOKED CREEK POD - 1510 FEET NORTH AND 2210 FEET WEST FROM THE SE CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION – POD #1 AND POD #2						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	11	SE SW		22.5
34 S	7.5 E	WM	11	SW SE		27.1
34 S	7.5 E	WM	14	NE NE		1.6
34 S	7.5 E	WM	14	NW NE		37.6
34 S	7.5 E	WM	14	SW NE		37.6
34 S	7.5 E	WM	14	SE NE		16.5
34 S	7.5 E	WM	14	NE NW		40.0
34 S	7.5 E	WM	14	NW NW	5	22.9
34 S	7.5 E	WM	14	SW NW	6	16.6
34 S	7.5 E	WM	14	SE NW		40.0
34 S	7.5 E	WM	14	NE SW	7	43.1
34 S	7.5 E	WM	14	SE SW	8	10.9
34 S	7.5 E	WM	14	NE SE		11.5
34 S	7.5 E	WM	14	NW SE		40.0
34 S	7.5 E	WM	14	SW SE	9	33.9
34 S	7.5 E	WM	14	SE SE		13.6
34 S	7.5 E	WM	23	NE NE		32.4
34 S	7.5 E	WM	23	NW NE	1	9.8
34 S	7.5 E	WM	23	SE NE	2	28.5
34 S	7.5 E	WM	23	NE SE	3	5.7
34 S	7.5 E	WM	24	NW NW		6.0
34 S	7.5 E	WM	24	SW NW		37.2
34 S	7.5 E	WM	24	NE SW		8.0
34 S	7.5 E	WM	24	NW SW	6	37.7
34 S	7.5 E	WM	24	SE SW	7	9.6
					Total	590.3

IRRIGATION – POD #3						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	11	SW SE		12.9
34 S	7.5 E	WM	11	SE SE		39.6
34 S	7.5 E	WM	12	SW SW		39.2
34 S	7.5 E	WM	12	SE SW		30.4
34 S	7.5 E	WM	13	NW NE	4	2.2
34 S	7.5 E	WM	13	SW NE	6	12.3
34 S	7.5 E	WM	13	SE NE	7	6.2
34 S	7.5 E	WM	13	NE NW		35.6
34 S	7.5 E	WM	13	NW NW		40.0
34 S	7.5 E	WM	13	SW NW		40.0
34 S	7.5 E	WM	13	SE NW		40.0
34 S	7.5 E	WM	13	NE SW		30.4
34 S	7.5 E	WM	13	NW SW		40.0
34 S	7.5 E	WM	13	SW SW		3.4
34 S	7.5 E	WM	13	SE SW		10.6
34 S	7.5 E	WM	13	NE SE	9	0.5

IRRIGATION – POD #3						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	13	NW SE	10	9.6
34 S	7.5 E	WM	13	NW SE	11	14.0
34 S	7.5 E	WM	13	NW SE	12	3.7
34 S	7.5 E	WM	13	SW SE	13	3.9
34 S	7.5 E	WM	13	SW SE	14	7.9
34 S	7.5 E	WM	14	NE NE		38.4
34 S	7.5 E	WM	14	NW NE		2.4
34 S	7.5 E	WM	14	SE NE		24.5
34 S	7.5 E	WM	14	NE SE		6.6
34 S	7.5 E	WM	24	NE NE		4.8
34 S	7.5 E	WM	24	NW NE		37.4
34 S	7.5 E	WM	24	SW NE		37.5
34 S	7.5 E	WM	24	SE NE		0.9
34 S	7.5 E	WM	24	NE NW		11.2
34 S	7.5 E	WM	24	SE NW		13.8
34 S	7.5 E	WM	24	NE SW		6.0
34 S	7.5 E	WM	24	NE SE		0.3
34 S	7.5 E	WM	24	NW SE		22.1
34 S	7.5 E	WM	24	SW SE		29.1
34 S	7.5 E	WM	24	SE SE		1.9
34 S	7.5 E	WM	25	NE NW		2.2
Total						661.5

9. Temporary Transfer Application T-13673 proposes to temporarily change the place of use of the right to:

IRRIGATION – WOOD RIVER				
Twp	Rng	Mer	Unit	Acres
48 N	2 E	MDM	3A – UNSURVEYED	224.0
48 N	2 E	MDM	6A – UNSURVEYED	366.3
Total				590.3

IRRIGATION – CROOKED CREEK					
Twp	Rng	Mer	Unit	Q-Q	Acres
48 N	2 E	MDM	3A – UNSURVEYED		2.2
48 N	2 E	MDM	3A – UNSURVEYED		6.5
48 N	2 E	MDM	3A – UNSURVEYED		10.9
48 N	2 E	MDM	3A – UNSURVEYED		12.7
48 N	2 E	MDM	3A – UNSURVEYED		18.8
48 N	2 E	MDM	3A – UNSURVEYED		21.5
48 N	2 E	MDM	3A – UNSURVEYED		60.1
48 N	2 E	MDM	3B1 - UNSURVEYED		25.9
48 N	2 E	MDM	3B1 - UNSURVEYED		51.9
48 N	2 E	MDM	3B1 - UNSURVEYED		69.3
48 N	2 E	MDM	3B1 - UNSURVEYED		72.7
48 N	2 E	MDM	3B2	NW SE	6.9
48 N	2 E	MDM	3B2 - UNSERVEYED		26.8
48 N	2 E	MDM	3B2 - UNSERVEYED		36.2

IRRIGATION – CROOKED CREEK					
Twp	Rng	Mer	Unit	Q-Q	Acres
48 N	2 E	MDM	3B2 - UNSERVEYED		72.2
48 N	2 E	MDM	3B2 - UNSERVEYED		74.4
48 N	2 E	MDM	3B2 - UNSERVEYED		92.5
Total					661.5

10. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13673 proposes to move the authorized points of diversion downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in miles (mi.)
40 S	8 E	WM	2	NE NW	NORTH CANAL (ALTERNATE) – 316 FEET SOUTH AND 1964 FEET EAST FROM THE NW CORNER OF SECTION 2	42.2 mi.
40 S	8 E	WM	15	NE NW	ADY/CENTRAL CANAL (PRIMARY) - 1220 FEET SOUTH AND 2730 FEET WEST FROM THE NE CORNER OF SECTION 15	44.0 mi.

### **Temporary Transfer Review Criteria**

11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing claim is present.
12. The proposed changes would prevent the lands from which the water right is removed during the period of the temporary transfer from receiving water under the transferred claim, as required by ORS 540.523(7).
13. The proposed changes would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(5) if the Department later finds that the transfer is causing injury to any existing water right.

### **Conclusions of Law**

The temporary changes in place of use and points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13673 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

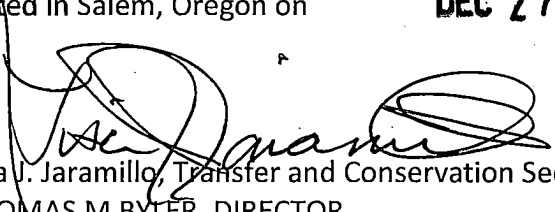
### **Now, therefore, it is ORDERED:**

1. The temporary change in place of use and change in points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13673 is approved.

2. The former place of use **shall not** be irrigated as part of this claim during the 2021, 2022, 2023, 2024, and 2025 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2025 irrigation season. The authorization to use the new point of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Claim KA-67.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. The quantity of water diverted at the new points of diversion (North Canal (alternate) and Ady/Central Canal (primary)), shall not exceed the quantity of water lawfully available at the original points of diversion (Wood River POD 1(headgate), Wood River POD 2. (pump), and Crooked Creek POD).
9. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.

Dated in Salem, Oregon on

**DEC 27 2021**

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR  
Oregon Water Resources Department

Mailing Date:

**DEC 28 2021**