

**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	)	CORRECTED PARTIAL ORDER OF
ROGER NICHOLSON	)	DETERMINATION
_____	)	
	)	Water Right Claim 63

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 63 (Claimant: ROGER NICHOLSON) and its associated contests (2835, 3276, 3461, 3803, and 4116) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 195.
2. On May 6, 2003, Claim 63 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) for Claim 63 on April 17, 2007.
6. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States of America.

7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 63. The exceptions are found to be persuasive, and therefore, modifications are made to the Proposed Order as described in Section A.9, below.
8. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of the Case” is adopted in its entirety.
  - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.9, below
  - c. The “Issues” is adopted in its entirety.
  - d. The “Findings of Fact” is adopted in its entirety.
  - e. The “Conclusions of Law” is adopted in its entirety.
  - f. The “Opinion” is adopted with modifications, as set forth in Section A.10, below.
  - g. The “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 63. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
9. **Evidentiary Rulings.** Within the section titled “Evidentiary Rulings” of the Proposed Order, the first paragraph is modified as follows:

The STIPULATION BETWEEN CLAIMANT AND THE UNITED STATES TO RESOLVE THE UNITED STATES’ CONTEST 3803 dated June 30, 2006, is added to the list of items that were admitted into the record.

**Reason for Modification:** To correct an omission from the list of Evidentiary Rulings, an issue raised in exceptions.

10. **Opinion.** Within the section titled “Opinion” of the Proposed Order, OWRD removed the ALJ’s discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

**Reason for Modifications:** To correct and clarify the elements of a Walton water right.

## B. DETERMINATION

The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:

- a. The “History of the Case” is adopted in its entirety.
- b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.9, above.
- c. The “Issues” is adopted in its entirety.
- d. The “Findings of Fact” is adopted in its entirety.

- e. The "Conclusions of Law" is adopted in its entirety.
  - f. The "Opinion" is adopted with modifications, as set forth in Section A.10, above.
  - g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 63. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
  3. Based on the file and record herein, IT IS ORDERED that Claim 63 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 63**

**CLAIM MAP REFERENCE:**

CLAIM # 63, PAGE 82; OWRD INVESTIGATION MAPS – T 33 S, R 7.5 E and T 34 S, R 7.5 E

**CLAIMANT:** ROGER NICHOLSON  
PO BOX 458  
FORT KLAMATH OR 97626

**SOURCE OF WATER:** FORT CREEK, tributary to the WOOD RIVER

**PURPOSE OR USE:**

IRRIGATION OF 237.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 470 HEAD; AND LIVESTOCK WATERING OF 470 HEAD OUTSIDE OF THE IRRIGATION SEASON.

**RATE OF USE:**

5.9337 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

5.925 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, AND

0.0087 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 5640 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

**DUTY:**

4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

**PERIOD OF ALLOWED USE:**

Use	Period
Irrigation with Incidental Livestock Watering	April 1 - November 1
Livestock Watering	November 2 - March 31

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

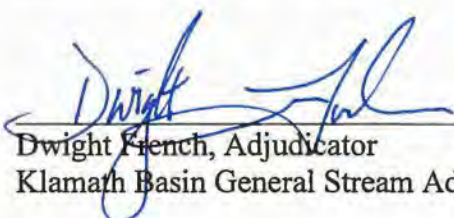
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	2	NW SW	40.0
34 S	7.5 E	WM	2	SW SW	19.7
34 S	7.5 E	WM	2	SE SW	21.5
34 S	7.5 E	WM	3	NE SE	39.8
34 S	7.5 E	WM	3	NW SE	40.0
34 S	7.5 E	WM	3	SW SE	36.0
34 S	7.5 E	WM	3	SE SE	40.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
 \_\_\_\_\_  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication