

**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
THOMAS FAMILY LIMITED)	DETERMINATION
PARTNERSHIP)	
_____)	Water Right Claim 67

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 67 (Claimant: THOMAS FAMILY LIMITED PARTNERSHIP) and its associated contests (2756, 2837, 3104, 3464, 3806, and 4119) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 198.
2. On May 6, 2003, Claim 67 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 67 on March 14, 2007.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by the Thomas Family Limited Partnership.
7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 67. The exceptions are found to be persuasive, and therefore, modifications are made to the Proposed Order as described in Section A.11.a, 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 67. Except as identified in Section A.11, below, 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 TO RESOLVE CONTESTS 3464 AND 3806 dated January 26, 2006, is added to the list of items that were admitted into the record.

Reason for Modification: A STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 was executed on January 26, 2006 between the Claimant, the United States, and the “Klamath Project Water Users.” Although a CLAIMANT’S UNOPPOSED MOTION TO ADMIT THE STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 INTO THE RECORD (February 14, 2006) was filed, and the motion recited that the other participants did not oppose the motion, the motion was not formally granted by an order. However, the Administrative Law Judge based his Proposed Order on the terms specified in the stipulation. As a result, the Adjudicator treats the failure to explicitly admit the stipulation into the record as an oversight and treats the motion as if it had been explicitly granted. The STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 was also omitted from the Section titled “Evidentiary Rulings.” Therefore, the adjudicator modifies the Proposed Order to correct this omission.

10. **Opinion.** OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

Reason for Modification: To clarify the elements of a Klamath Termination Act water right.

11. **Order.**

- a. Within the section titled "Order" of the Proposed Order, the duty for Diversion Point #3 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Duty: ~~2324~~ 2325 acre-feet

Reason for Modification: To correct a scrivener's error; the calculation for the duty is based on 3.0 acre-feet per acre per year for 775.0 acres, an issue raised in exceptions.

- b. Within the section titled "Order" of the Proposed Order, the season of use for livestock watering is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Stock Water for 3,400 head of cattle, between ~~March~~ April 1 and October 31

Reason for Modification: To correct a scrivener's error. As per the Stipulation, livestock use is incidental to irrigation, and as such the season of use is coincidental to the irrigation season.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
- The "History of the Case" is adopted in its entirety.
 - The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, above.
 - The "Issues" is adopted in its entirety.
 - The "Findings of Fact" is adopted in its entirety.
 - The "Conclusions of Law" is adopted in its entirety.
 - The "Opinion" is adopted with modifications, as set forth in Section A.10, above.
 - 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 67. Except as identified in Section A.11, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 67 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 67

CLAIM MAP REFERENCE: CLAIM # 67 SETTLEMENT MAP (Feb. 23, 2006)

CLAIMANT: THOMAS FAMILY LIMITED PARTNERSHIP
5800 GEORGIA DR
BAKERSFIELD, CA 93308

SOURCE OF WATER:

The WOOD RIVER, tributary to UPPER KLAMATH LAKE, and CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:

IRRIGATION OF 1500.5 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 3400 HEAD, BEING 725.5 ACRES FROM WOOD RIVER PODS 1 AND 2, AND 775.0 ACRES FROM CROOKED CREEK POD.

RATE OF USE:

30.01 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 14.51 CFS FROM WOOD RIVER PODS 1 AND 2, AND 15.5 CFS FROM CROOKED CREEK POD.

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Wood River POD 1 (Headgate)	34 S	7.5 E	WM	14	NW NW	5	30 FEET SOUTH AND 2450 FEET WEST FROM N¼ CORNER, SECTION 14
Wood River POD 2 (Pump)	34 S	7.5 E	WM	14	NW NW	5	45 FEET SOUTH AND 2450 FEET WEST FROM N¼ CORNER, SECTION 14
Crooked Creek POD	34 S	7.5 E	WM	13	NW SE		1510 FEET NORTH AND 2210 FEET WEST FROM SE CORNER, SECTION 13

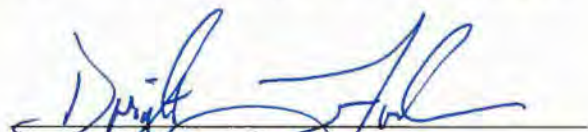
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD	
34 S	7.5 E	WM	11	SE SW		22.5	Wood River POD 1 (Headgate) and/or Wood River POD 2 (Pump)	
34 S	7.5 E	WM	11	SW SE		27.1		
34 S	7.5 E	WM	13	SW SW		10.3		
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		7	43.1		
34 S	7.5 E	WM	14	SE SW	8	10.9		
34 S	7.5 E	WM	14	NE SE		33.4		
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		40.0		
34 S	7.5 E	WM	23	NE NE		40.0		
34 S	7.5 E	WM	23		2	28.5		
34 S	7.5 E	WM	23	NW NE	1	9.8		
34 S	7.5 E	WM	23	NE SE	3	5.7		
34 S	7.5 E	WM	24	NW NW		30.0		
34 S	7.5 E	WM	24	SW NW		41.0		
34 S	7.5 E	WM	24	SE NW		13.3		
34 S	7.5 E	WM	24	NE SW		33.0		
34 S	7.5 E	WM	24	NW SW	6	37.7		
34 S	7.5 E	WM	24		7	12.5		
34 S	7.5 E	WM	11	SW SE		12.9		Crooked Creek POD
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		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		35.1		
34 S	7.5 E	WM	13	NW SW		40.0		
34 S	7.5 E	WM	13	SW SW		29.7		
34 S	7.5 E	WM	13	SE SW		39.8		
34 S	7.5 E	WM	13	NE SE	9	0.5		
34 S	7.5 E	WM	13	NW SE	12	3.7		
34 S	7.5 E	WM	13	NW SE	11	14.0		
34 S	7.5 E	WM	13		10	9.6		
34 S	7.5 E	WM	14	NE NE		38.4		
34 S	7.5 E	WM	14	NW NE		2.4		

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7.5 E	WM	14	SE NE		24.5	Crooked Creek POD
34 S	7.5 E	WM	14	NE SE		6.6	
34 S	7.5 E	WM	13	SW SE	14	7.9	
34 S	7.5 E	WM	13	SW SE	13	3.9	
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		41.9	
34 S	7.5 E	WM	24	NW NW		10.5	
34 S	7.5 E	WM	24	SE NW		25.9	
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	

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication