

**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 the)	PARTIAL ORDER OF
UNITED STATES DEPARTMENT OF)	DETERMINATION
INTERIOR, U.S. FISH AND WILDLIFE)	
SERVICE)	
_____)	Water Right Claims 301, 302, 303,
		304, 305, 306, and 307

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. Claims 301, 302, 303, 304, 305, 306, and 307 (Claimant: UNITED STATES DEPARTMENT OF INTERIOR, U.S. FISH AND WILDLIFE SERVICE) and their associated contests (Claim 301: 3290, 3661, 3993; Claim 302: 3291, 3662; Claim 303: 3292, 3663; Claim 304: 3293, 3664; Claim 305: 3294, 3665; Claim 306: 3295, 3666; Claim 307: 3296, 3667) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 272.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a CORRECTED PROPOSED ORDER¹ (Proposed Order) for Claims 301-307 on December 8, 2006.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, (1) the United States, and (2) the Klamath Project Water Users (KPWU). Responses to exceptions were timely filed by (1) the United States and (2) the Klamath Project Water Users.
4. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 301-307. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.6, A.7, and A.8, below.

¹ The CORRECTED PROPOSED ORDER replaced a PROPOSED ORDER issued on December 4, 2006. The CORRECTED PROPOSED ORDER corrected a reference to the claims at issue in the History of the Case.

5. 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 “Issues” is adopted in its entirety.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.6, below.
 - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.7, below.
 - f. The “Opinion” is replaced in its entirety, as set forth in Section A.8, below.
 - g. The “Order” is replaced in its entirety by the Water Right Claim Description set forth in Section B of this Partial Order of Determination for Claims 301-307. The Order is presented in a format standardized by OWRD. Consistent with Sections A.6, A.7, and A.8, below, the outcome of the Order has been modified as to recognize rights for irrigation on an additional 0.4 acres for Claim 301 (to correct a scrivener’s error), 5677.7 acres for Claim 302, 69.4 acres for Claim 303, 160.0 acres for Claim 304, 320.0 acres for Claim 305, and 319.0 acres for Claim 306; and livestock watering for Claim 302.
6. **Findings of Fact.** The Proposed Order’s “Findings of Fact” section is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~striketrough~~” text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding.

a. Modifications to Finding of Fact 1 (Pertaining to Claim 301):

The first sentence is modified as follows:

The land subject to claim 301 is composed of ~~4858.9~~ 4859.3 acres², all of which was once within the Klamath Indian Reservation.

Subsection c. is modified as follows:

c. Allotment 797, located in the W½ E½ Section 14, T 30 S R 9 E. W.M. was originally allotted to Mary Mitchell, a Klamath Indian. Water use was developed on the property prior to 1918, as shown by a Notice of Complete Application of Water to Beneficial User (C-11956). Allotment 797 left Indian ownership in 1914 (conveyed to A.M. Abel), and was then conveyed to

² Although the total acres on the original claim submitted April, 30, 1997 was shown as 4858.9, this total included a typographical error whereby 0.05 acre was listed instead of 0.5 acre in the NW ¼ NE ¼, Section 36, T 30 S, R 9 E.W.M. The OWRD Field Investigation map, which was relied on by the Claimant, shows 0.5 acre in this quarter-quarter. (Case 272 OWRD Ex. 1 at 9 and 202.) The correct total of 4859.3 acres and correct number of acres in this quarter-quarter were indicated on the Claimant’s October 1, 1999 Revised Place of Use listing. (Case 272 OWRD Ex. 1 at 176-178.)

William Kittridge, the second non-Indian owner, in 1918. (Rauch Corrected Testimony at 4; Exhibits 272E00040153-54.) The land was conveyed to William Kittridge, a non-Indian, in 1921. Kittridge then transferred the property to Nicol, also a non-Indian, in 1955 1975. (Id.)

Subsection ll. is modified as follows:

ll. Allotment 364, located in the N ½ NE ¼, Section 26, S ½ S ½ SE ¼, Section 25, and the N ½ NE ¼, Section 36, T 30 S, R 9 E. W. M. was originally allotted to Mollie Brown, a Klamath Indian. Water use was developed on the property prior to 1918, as shown by a Notice of Complete Application of Water to Beneficial Use (C-11956). The land was conveyed to William Kittridge, a non-Indian, in 1920. The property was then transferred to D.L. Nicol, also a non-Indian, in 1973.

Subsection oo. is added as follows:

oo. An allotment located in the NW¼, Section 25, T 30 S, R 9 E. W.M. was originally allotted to an unknown Klamath Indian, who transferred the property to Ora Summers, a Klamath Indian. The land was conveyed to J.C. Horton, a non-Indian, in 1978. Horton immediately transferred to property to the Horton Family Trust, in July 1978. (OWRD Ex. 1 at 136-142.) Water use was developed on the property prior to 1918, as shown by a Notice of Complete Application of Water to Beneficial Use (C-11956).

Subsection pp. is added as follows:

pp. An allotment located in the Lot 2 (SW¼ NW¼), SE¼ NW ¼, and Section 30, T 30 S, R 10 E. W.M. is within the boundary of the Klamath Reservation. Water use was developed on the property prior to 1893 as noted on an water right application map for C-11956 and continued to be irrigated in 1918, as shown by a Notice of Complete Application of Water to Beneficial Use (C-11956). (Affidavit and Testimony of Paul Rauch at 13; OWRD Ex. 1 at 12, 27; Exhibit 272E00040002.) Development of water use occurred within five years of the General Allotment Act of 1887.

Subsection qq. is added as follows:

qq. An allotment located in the NE¼ SW ¼, and Lot 3 (NW¼ SW¼), Section 30, T 30 S, R 10 E. W.M. is within the boundary of the Klamath Reservation. Water use was developed on the property prior to 1893 as noted on an water right application map for C-11956 and continued to be irrigated in 1918, as shown by a Notice of Complete Application of Water to Beneficial Use (C-11956). (Affidavit and Testimony of Paul Rauch at 13; OWRD Ex. 1 at 12, 27; Exhibit 272E00040002.) Development of water use occurred within five years of the General Allotment Act of 1887.

The final paragraph of Finding of Fact 1 is modified as follows:

Water has been beneficially applied to the property as follows:

Rate: Up to 35.0 cfs each from PODs 1 and 2, and/or up to 49.8 cfs from POD 3, not to exceed a combined rate of 60.7 cubic feet per second (cfs) for irrigation.

Limit: 1/80th cfs/acre, as claimed.

Duty: 14,576.7 acre-feet per year, not to exceed 3.0 acre-feet per acre as claimed.

Place of Use: See Attachment 1. (Contents inserted below):

Points of Diversion: from the Williamson River, tributary to Upper Klamath Lake, at the following locations:

POD 3: NE¼ NW ¼, Section 24, T 30 S, R 9 E. W.M.

POD 1: SW¼ SE ¼, Section 18, T 30 S, R 10 E. W.M.

POD 2: SE¼ NW ¼, Section 19, T 30 S, R 10 E. W.M.

Use: Irrigation of ~~4858.9~~ 4,859.3 acres

Season of Use: March 1 – October 31 for irrigation, ~~January 1 to December 31~~
for livestock.

Priority Date: October 14, 1864.

Reasons for Modifications: To clarify the ownership history of Allotment 797, because the ownership history provided in the Proposed Order is not supported by a preponderance of the evidence; to add Findings of Fact for places of use not previously included, to provide, based on evidence in the record, the per-acre limits for rate and duty; to remove the livestock season, since livestock use was not claimed.

“Attachment 1” is modified as follows:

ATTACHMENT 1
KLAMATH ADJUDICATION CASE 272

PLACE OF USE FOR CLAIM 301, AS ALLOWED

SE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 10, T 30 S, R 9 E.W.M.	37.9 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 11, T 30 S, R 9 E.W.M.	37.9 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 11, T 30 S, R 9 E.W.M.	37.7 acres
SE SW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 11, T 30 S, R 9 E.W.M.	37.9 34.0 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	37.4 acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	38.8 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
SE $\frac{1}{4}$ SE SW $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	40.0 acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	38.4 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 14, T 30 S, R 9 E.W.M.	39.3 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 15, T 30 S, R 9 E.W.M.	40.0 acres

NE ¹ / ₄ SE ¹ / ₄	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SE ¹ / ₄	Section 15, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SE ¹ / ₄	Section 16, T 30 S, R 9 E.W.M.	24.3 acres
SW ¹ / ₄ SE ¹ / ₄	Section 16, T 30 S, R 9 E.W.M.	19.2 acres
SE ¹ / ₄ SE ¹ / ₄	Section 16, T 30 S, R 9 E.W.M.	39.6 acres
NE ¹ / ₄ NE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SW ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SW ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 <u>37.5</u> acres
NE ¹ / ₄ SE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	37.8 acres
SE ¹ / ₄ SE ¹ / ₄	Section 21, T 30 S, R 9 E.W.M.	38.8 <u>37.9</u> acres
NE ¹ / ₄ NE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	37.5 acres
SE ¹ / ₄ SW ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	37.2 acres
NE ¹ / ₄ SE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	36.1 acres
SE ¹ / ₄ SE ¹ / ₄	Section 22, T 30 S, R 9 E.W.M.	35.9 acres
NE ¹ / ₄ NE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	38.2 acres
NW ¹ / ₄ NE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	37.3 acres

SW ¹ / ₄ SW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	37.0 acres
SE ¹ / ₄ SW ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	32.6 acres
NE ¹ / ₄ SE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	36.8 acres
SE ¹ / ₄ SE ¹ / ₄	Section 23, T 30 S, R 9 E.W.M.	36.9 acres
NE ¹ / ₄ NW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	35.7 acres
NW ¹ / ₄ NW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	38.2 acres
SW ¹ / ₄ NW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	36.5 acres
NE ¹ / ₄ SW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	35.7 acres
NW ¹ / ₄ SW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	36.7 acres
SE ¹ / ₄ SW ¹ / ₄	Section 24, T 30 S, R 9 E.W.M.	35.3 acres
NE ¹ / ₄ NE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	38.6 acres
NW ¹ / ₄ NE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	38.2 acres
SW ¹ / ₄ NE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	31.3 acres
SE ¹ / ₄ NE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	37.1 acres
NE ¹ / ₄ NW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	38.1 acres
NW ¹ / ₄ NW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	38.6 acres
SW ¹ / ₄ NW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	39.4 acres
NE ¹ / ₄ SW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	22.7 acres
NW ¹ / ₄ SW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SW ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	39.1 acres
NE ¹ / ₄ SE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	32.6 acres
NW ¹ / ₄ SE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	4.6 acres
SW ¹ / ₄ SE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	32.4 acres
SE ¹ / ₄ SE ¹ / ₄	Section 25, T 30 S, R 9 E.W.M.	35.2 acres
NE ¹ / ₄ NE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	38.8 acres
SW ¹ / ₄ NE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	38.8 acres
SE ¹ / ₄ NE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NW ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	37.1 acres
NW ¹ / ₄ NW ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	39.0 acres
SW ¹ / ₄ NW ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	24.7 acres
SE ¹ / ₄ NW ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	37.5 acres
NE ¹ / ₄ SE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SE ¹ / ₄	Section 26, T 30 S, R 9 E.W.M.	38.6 acres
NE ¹ / ₄ NE ¹ / ₄	Section 27, T 30 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NE ¹ / ₄	Section 27, T 30 S, R 9 E.W.M.	40.0 acres

SW¼ NE¼	Section 27, T 30 S, R 9 E.W.M.	25.8 acres
SE¼ NE¼	Section 27, T 30 S, R 9 E.W.M.	28.0 acres
NE¼ NW¼	Section 27, T 30 S, R 9 E.W.M.	40.0 acres
NW¼ NW¼	Section 27, T 30 S, R 9 E.W.M.	39.4 acres
SW¼ NW¼	Section 27, T 30 S, R 9 E.W.M.	4.5 acres
SE¼ NW¼	Section 27, T 30 S, R 9 E.W.M.	16.5 acres
NE¼ NE¼	Section 28, T 30 S, R 9 E.W.M.	36.3 acres
NW¼ NE¼	Section 28, T 30 S, R 9 E.W.M.	15.3 acres
NW¼ NE¼	Section 36, T 30 S, R 9 E.W.M.	0.5 acre
SW¼ NW¼	Section 19, T 30 S, R 10 E.W.M.	33.4 acres
SE¼ NW¼	Section 19, T 30 S, R 10 E.W.M.	35.4 acres
NE¼ SW¼	Section 19, T 30 S, R 10 E.W.M.	36.1 acres
NW¼ SW¼	Section 19, T 30 S, R 10 E.W.M.	31.4 acres
SW¼ SW¼	Section 19, T 30 S, R 10 E.W.M.	30.8 acres
SE¼ SW¼	Section 19, T 30 S, R 10 E.W.M.	10.9 acres
NE¼ NW¼	Section 30, T 30 S, R 10 E.W.M.	25.9 acres
NW¼ NW¼	Section 30, T 30 S, R 10 E.W.M.	32.4 acres
SW¼ NW¼	Section 30, T 30 S, R 10 E.W.M.	32.4 acres
SE¼ NW¼	Section 30, T 30 S, R 10 E.W.M.	33.3 acres
NE¼ SW¼	Section 30, T 30 S, R 10 E.W.M.	17.8 acres
NW¼ SW¼	Section 30, T 30 S, R 10 E.W.M.	9.5 acres

Reasons for Modifications to Attachment 1: To correct for scrivener's errors in Place of Use listing in the ALJ's Attachment 1. Corrections are based on comparing the Revised Place of Use filed on October 1, 1999 (Case 272 OWRD Ex. 1 at 176-178) with the OWRD Field Investigation Map for Township 30 South, Range 9 East (Case 272 OWRD Ex. 1 at 9).

b. Modifications to Finding of Fact 2 (Pertaining to Claim 302):

The final two paragraphs of Finding of Fact 2 are modified as follows:

The land subject to claim 302 is composed of 5,677.1³ acres. ~~Except for 80 acres;~~ The property subject to this claim was purchased by the United States in 1989 or 1990. It was originally held directly by the Klamath Tribes, and transferred by the Tribes to the Nicol Land and Cattle Company in 1976. (Affidavit and Testimony of Paul Rauch.) ~~The other~~ One 80-acre parcel within this land (Allotment 1596, located in E½ NE¼, Section 2, T 30 S, R 9 E. W.M.) was allotted to Dolly Lawvor, a Klamath Indian. However, in 1971 this 80-acre parcel was transferred by a Klamath Indian

successor to Dolly Lawvor back to the Klamath Tribes. (Correction to Rauch Testimony at 3; OWRD Ex. 1 at 303-05.) Allotment 1596 was sold The Klamath Tribes then sold Allotment 1596 to the Nicol Land and Cattle Company in 1976. (Correction to Testimony and Affidavit of Paul Rauch, at 3; OWRD Ex. 1 at 306-309.) In 1979, Mark Nicol and Dana Nicol, formerly partners in the Nicol Land and Cattle Company, which had been dissolved after acquiring the property, applied for a Water User Permit for all the land subject to this claim, (P-44425), and completed the works that year. (OWRD Ex. 1 at 289-92.) (Testimony of Paul Rauch; OWRD Ex. 1 at 287, 288.)

Water was not beneficially applied to the property prior to transfer to the second non-Indian owner. (Correction to Testimony and Affidavit of Paul Rauch, at 3; OWRD Ex. 1 at 289-92.) However, water was applied to a beneficial use with reasonable diligence following transfer from Indian ownership, as follows:

Rate: 71.05 cfs for irrigation

Limit: 1/80th cfs/acre, as claimed.

Duty: 17,053 acre-feet per year, not to exceed 3.0 acre-feet/acre as claimed.

Livestock Watering: 0.01cfs, further limited to 12 gallons per head per day⁴ for a maximum of 500 head.

Place of Use:

<u>NE¹/₄ SW¹/₄</u>	<u>Section 15, T 29 S, R 9 E.W.M.</u>	<u>13.5 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 15, T 29 S, R 9 E.W.M.</u>	<u>20.0 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 15, T 29 S, R 9 E.W.M.</u>	<u>37.2 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 15, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ SE¹/₄</u>	<u>Section 15, T 29 S, R 9 E.W.M.</u>	<u>20.0 acres</u>
<u>NE¹/₄ NE¹/₄</u>	<u>Section 22, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

³ Although the original claim was for 5694.7 acres, the Preliminary Evaluation found that actual acreage was 5677.1. Claimant did not contest this figure.

⁴ Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

NW ¹ / ₄ NE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NW ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	20.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	20.0 acres
NE ¹ / ₄ SW ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	20.0 acres
SW ¹ / ₄ SW ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	38.1 acres
SE ¹ / ₄ SW ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SE ¹ / ₄	Section 22, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NW ¹ / ₄	Section 23, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NW ¹ / ₄	Section 23, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SW ¹ / ₄	Section 23, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SW ¹ / ₄	Section 23, T 29 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ NW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ NW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SW ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ SE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
NW ¹ / ₄ SE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 27, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ SE ¹ / ₄	Section 27, T 30 S, R 9 E.W.M.	40.0 acres
NE ¹ / ₄ NE ¹ / ₄	Section 28, T 29 S, R 9 E.W.M.	20.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 28, T 29 S, R 9 E.W.M.	20.0 acres
NE ¹ / ₄ SE ¹ / ₄	Section 28, T 29 S, R 9 E.W.M.	16.7 acres
SE ¹ / ₄ SE ¹ / ₄	Section 28, T 29 S, R 9 E.W.M.	37.9 acres
NE ¹ / ₄ SE ¹ / ₄	Section 32, T 29 S, R 9 E.W.M.	39.0 acres
SW ¹ / ₄ SE ¹ / ₄	Section 32, T 29 S, R 9 E.W.M.	32.8 acres
SE ¹ / ₄ SE ¹ / ₄	Section 32, T 29 S, R 9 E.W.M.	38.7 acres
NE ¹ / ₄ NE ¹ / ₄	Section 33, T 29 S, R 9 E.W.M.	33.7 acres
NW ¹ / ₄ NE ¹ / ₄	Section 33, T 29 S, R 9 E.W.M.	31.0 acres
SW ¹ / ₄ NE ¹ / ₄	Section 33, T 29 S, R 9 E.W.M.	40.0 acres
SE ¹ / ₄ NE ¹ / ₄	Section 33, T 29 S, R 9 E.W.M.	36.2 acres
SW ¹ / ₄ NW ¹ / ₄	Section 33, T 29 S, R 9 E.W.M.	39.1 acres

<u>SE¹/₄ NW¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SW¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SW¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>38.7 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>38.8 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>36.2 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>39.0 acres</u>
<u>SE¹/₄ SE¹/₄</u>	<u>Section 33, T 29 S, R 9 E.W.M.</u>	<u>36.1 acres</u>
<u>NE¹/₄ NE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>39.2 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>39.2 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>39.4 acres</u>
<u>SE¹/₄ SE¹/₄</u>	<u>Section 34, T 29 S, R 9 E.W.M.</u>	<u>39.6 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>39.6 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>39.6 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 35, T 29 S, R 9 E.W.M.</u>	<u>39.6 acres</u>
<u>NE¹/₄ NE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

<u>NE¹/₄ SW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 2, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

<u>NE¹/₄ NE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ SE¹/₄</u>	<u>Section 3, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

<u>NE¹/₄ NE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>36.3 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>36.3 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>31.4 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>36.1 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ SE¹/₄</u>	<u>Section 4, T 30 S, R 9 E.W.M.</u>	<u>36.0 acres</u>

<u>NE¹/₄ NE¹/₄</u>	<u>Section 5, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 5, T 30 S, R 9 E.W.M.</u>	<u>25.8 acres</u>
<u>SE¹/₄ NE¹/₄</u>	<u>Section 5, T 30 S, R 9 E.W.M.</u>	<u>39.9 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 5, T 30 S, R 9 E.W.M.</u>	<u>14.0 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 5, T 30 S, R 9 E.W.M.</u>	<u>33.1 acres</u>

<u>NE¹/₄ NE¹/₄</u>	<u>Section 9, T 30 S, R 9 E.W.M.</u>	<u>35.8 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 9, T 30 S, R 9 E.W.M.</u>	<u>39.2 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 9, T 30 S, R 9 E.W.M.</u>	<u>7.8 acres</u>
<u>SE¹/₄ NE¹/₄</u>	<u>Section 9, T 30 S, R 9 E.W.M.</u>	<u>26.6 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 9, T 30 S, R 9 E.W.M.</u>	<u>24.3 acres</u>
<u>NW¹/₄ NE¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ NW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ NW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>34.8 acres</u>
<u>SE¹/₄ NW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>20.4 acres</u>
<u>NW¹/₄ SW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>8.0 acres</u>
<u>SE¹/₄ SW¹/₄</u>	<u>Section 10, T 30 S, R 9 E.W.M.</u>	<u>33.0 acres</u>

Point of Diversion: from the Williamson River, tributary to Upper Klamath Lake, at the following location:

POD 3: NE¹/₄ NW ¹/₄, Section 24, T 30 S, R 9 E. W.M.

Use: Irrigation of 5,677.7 acres.

Season of Use: March 1 – October 31 for irrigation; January 1 – December 31 for livestock watering

Priority Date: October 14, 1864.

Reasons for Modifications: The ALJ's conclusion that the Nicol Land and Cattle Company was dissolved is not supported by a preponderance of evidence in the record; to set forth additional evidence in the record pertaining to the ownership history of Allotment 1596; to set forth additional evidence in the record pertaining to use of water pertinent to Claim 302.

c. Modifications to Finding of Fact 3 (Pertaining to Claim 303):

The final paragraph of Finding of Fact 3 is modified as follows:

Water was not beneficially applied to the property prior to transfer to the second non-Indian owner. (OWRD Ex. 1 at 476, 485.) However, water was applied to a beneficial use with reasonable diligence following transfer from Indian ownership, as follows:

Rate: 1.73 cfs for irrigation

Limit: 1/40th cfs/acre, as claimed.

Duty: 208.2 acre-feet per year, not to exceed 3.0 acre-feet/acre as claimed.

Place of Use:

NE¹/₄ NW¹/₄ Section 19, T 30 S, R 10 E.W.M. 40.0 acres

NW¹/₄ NW¹/₄ Section 19, T 30 S, R 10 E.W.M. 29.4 acres

Point of Diversion: from the Williamson River, tributary to Upper Klamath Lake, at the following location:

POD 4: NW¹/₄ NW ¹/₄, Section 19, T 30 S, R 10 E, W.M.

Use: Irrigation of 69.4 acres.

Season of Use: March 1 – October 31 for irrigation

Priority Date: October 14, 1864.

Reason for Modifications: To set forth additional evidence in the record pertaining to use of water pertinent to Claim 303.

d. Modifications to Finding of Fact 4 (Pertaining to Claim 304):

The final paragraph of Finding of Fact 4 is modified as follows:

Water was not beneficially applied to the property prior to transfer to the second non-Indian owner. (OWRD Ex. 1 at 722, 585-86.) However, water was applied to a beneficial use with reasonable diligence following transfer from Indian ownership, as follows:

Rate: 4.0 cfs for irrigation

Limit: 1/40th cfs/acre, as claimed.

Duty: 480 acre-feet per year, not to exceed 3.0 acre-feet/acre, as claimed.

Place of Use:

<u>SW$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>Section 12, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>Section 12, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE$\frac{1}{4}$ NW$\frac{1}{4}$</u>	<u>Section 13, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW$\frac{1}{4}$ NW$\frac{1}{4}$</u>	<u>Section 13, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

Point of Diversion: from the Williamson River, tributary to Upper Klamath Lake, at the following location:

POD 4: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, T 30 S, R 10 E, W.M.

Use: Irrigation of 160.0 acres.

Season of Use: March 1 – October 31 for irrigation

Priority Date: October 14, 1864.

Reason for Modifications: To set forth additional evidence in the record pertaining to use of water pertinent to Claim 304.

e. Modifications to Finding of Fact 5 (Pertaining to Claim 305):

The final paragraph of Finding of Fact 5 is modified as follows:

Water was not beneficially applied to the property prior to transfer to the second non-Indian owner. (OWRD Ex. 1 at 722, 697-98.) However, water was applied to a beneficial use with reasonable diligence following transfer from Indian ownership, as follows:

Rate: Up to 8.0 cfs from POD 3 and/or up to 5.8 cfs from POD 4, not to exceed a combined rate of 8.0 cubic feet per second (cfs) for irrigation.

Limit: 1/40th cfs/acre, as claimed.

Duty: 960 acre-feet per year, not to exceed 3.0 acre-feet/acre as claimed.

Place of Use:

<u>SW$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>Section 13, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>Section 13, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

<u>NW¹/₄ NE¹/₄</u>	<u>Section 24, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ NE¹/₄</u>	<u>Section 24, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ SE¹/₄</u>	<u>Section 24, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NW¹/₄ SE¹/₄</u>	<u>Section 24, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SW¹/₄ SE¹/₄</u>	<u>Section 24, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>SE¹/₄ SE¹/₄</u>	<u>Section 24, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

Points of Diversion: from the Williamson River, tributary to Upper Klamath Lake, at the following locations:

POD 3: NE¹/₄ NW ¹/₄, Section 24, T 30 S, R 9 E, W.M.

POD 4: NW¹/₄ NW ¹/₄, Section 19, T 30 S, R 10 E, W.M.

Use: Irrigation of 320.0 acres.

Season of Use: March 1 – October 31 for irrigation

Priority Date: October 14, 1864.

Reason for Modifications: To set forth additional evidence in the record pertaining to use of water pertinent to Claim 305.

f. Modifications to Finding of Fact 6 (Pertaining to Claim 306):

The final paragraph of Finding of Fact 6 is modified as follows:

Water was not beneficially applied to the property prior to transfer to the second non-Indian owner. (OWRD Ex. 1 at 722, 831-833.) However, water was applied to a beneficial use with reasonable diligence following transfer from Indian ownership, as follows:

Rate: 7.98 cfs for irrigation

Limit: 1/40th cfs/acre, as claimed.

Duty: 957 acre-feet per year, not to exceed 3.0 acre-feet per acre as claimed.

Place of Use:

<u>NW¹/₄ NW¹/₄</u>	<u>Section 28, T 30 S, R 9 E.W.M.</u>	<u>39.0 acres</u>
<u>SW¹/₄ NW¹/₄</u>	<u>Section 28, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>
<u>NE¹/₄ NE¹/₄</u>	<u>Section 29, T 30 S, R 9 E.W.M.</u>	<u>40.0 acres</u>

SW¼ NE¼	Section 29, T 30 S, R 9 E.W.M.	40.0 acres
SE¼ NE¼	Section 29, T 30 S, R 9 E.W.M.	40.0 acres
SE¼ NW¼	Section 29, T 30 S, R 9 E.W.M.	40.0 acres
NE¼ SW¼	Section 29, T 30 S, R 9 E.W.M.	40.0 acres
NW¼ SE¼	Section 29, T 30 S, R 9 E.W.M.	40.0 acres

Point of Diversion: from the Williamson River, tributary to Upper Klamath Lake, at the following location:

POD 3: NE¼ NW ¼, Section 24, T 30 S R 9 E, W.M.

Use: Irrigation of 319.0 acres.

Season of Use: March 1 – October 31 for irrigation

Priority Date: October 14, 1864.

Reason for Modifications: To set forth additional evidence in the record pertaining to use of water pertinent to Claim 306.

g. Additional modifications to Findings of Fact 3 – 6:

Findings of Facts 3 through 6 are modified with respect to the dates of certain transfers of ownership. Specifically, the property at issue in Claims 303 through 306 was transferred from Indian ownership on July 3, 1978. The same property was transferred from the first non-Indian owner (John C. Horton) to the Horton Family Trust on November 7, 1978. (OWRD Ex. 1 at 483-85; 720-22.)

Reason for Modifications: The Proposed Orders findings concerning these transfer dates are not supported by a preponderance of evidence in the record.

h. Modifications to Finding of Fact 7 (Pertaining to Claim 307):

The final paragraph of Finding of Fact 7 is modified as follows:

~~With the exception of Allotment 693,~~ Water has been beneficially applied to the property as follows:

Rate: 3.61 cubic feet per second (cfs) (Note: The rate is limited due by the claimed diversion capacity. See OWRD Ex. 1 at 1032.)

Limit: 1/80th cfs/acre, as claimed.

Duty: ~~1,823.5~~ 1563 acre/-feet per year, not to exceed 3.0 acre-feet per acre, as claimed

Place of Use:

<u>NE$\frac{1}{4}$ NE$\frac{1}{4}$</u>	<u>40.0 acres</u>
<u>NW$\frac{1}{4}$ NE$\frac{1}{4}$</u>	<u>39.8 acres</u>
<u>SW$\frac{1}{4}$ NE$\frac{1}{4}$</u>	<u>36.2 acres</u>
<u>SE$\frac{1}{4}$ NE $\frac{1}{4}$</u>	<u>40.0 acres</u>
<u>NE$\frac{1}{4}$ SE $\frac{1}{4}$</u>	<u>40.0 acres</u>
<u>NW$\frac{1}{4}$ SE $\frac{1}{4}$</u>	<u>40.0 acres</u>
<u>Lot 3 SW$\frac{1}{4}$ SE $\frac{1}{4}$</u>	<u>39.3 acres</u>
<u>Lot 4 SE$\frac{1}{4}$ SE $\frac{1}{4}$</u>	<u>39.3 acres</u>
Section 35, T 30 S R 8 E.W.M.	
<u>NE$\frac{1}{4}$ SW $\frac{1}{4}$</u>	<u>20.3 acres</u>
<u>NW$\frac{1}{4}$ SW $\frac{1}{4}$</u>	<u>38.1 acres</u>
<u>Lot 1 SW$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>39.4 acres</u>
<u>Lot 2 SE$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>20.0 acres</u>
Section 36, T 30 S R 8 E.W.M.	
<u>Lot 5 NE$\frac{1}{4}$ NE$\frac{1}{4}$</u>	<u>6.8 acres</u>
<u>NW$\frac{1}{4}$ SW$\frac{1}{4}$</u>	
<u>Lot 6 NW$\frac{1}{4}$ NE$\frac{1}{4}$</u>	<u>16.4 acres</u>
<u>SW$\frac{1}{4}$ NE $\frac{1}{4}$</u>	<u>25.4 acres</u>
<u>SE$\frac{1}{4}$ NE $\frac{1}{4}$</u>	<u>40.0 acres</u>
Section 2, T 31 S R 8 E.W.M.	

Point of Diversion: From Lenz Creek (A.K.A. Big Springs Creek), tributary to the Williamson River, tributary to Upper Klamath Lake, at SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T 30 S. R 8 E. W. M.

Use: Irrigation of 521 acres

Season of Use: March 1 – October 31 for irrigation

Priority Date: October 14, 1864

Part of the property has also been irrigated by natural overflow. (OWRD Ex. 1 at 1021-1024.)

(OWRD Ex. 1 at 1023-24, Ex. 4008, Testimony of Rauch, Corrected Affidavit and Testimony of Rauch.)

Reasons for Modifications: To set forth additional evidence in the record pertaining to use of water pertinent to Claim 307; to make the finding of fact consistent with the Conclusions of Law and Opinion; to decrease the total volume of acre-feet per year such that it is based on a duty of 3.0 acre-feet per acre as claimed, an issue raised in exceptions to the proposed order by KPWU; to include the place of use from Allotment 693, being the NE¼ NE¼ (40.0 acres) and NW¼ NE¼ (39.8 acres), Section 35, Township 30 South, Range 8 East, W.M.; to correct for scrivener's errors in the Place of Use quarter-quarter listing in the ALJ's Proposed Order, and to insert number of acres within each quarter-quarter. Acreages and corrections to the quarter-quarter listing are based on comparing the Revised Place of Use filed on October 1, 1999 (Case 272 OWRD Ex. 1 at 1001) with the OWRD Field Investigation Maps for Township 30 South, Range 8 East and Township 31 South, Range 8 East (Case 272 OWRD Ex. 1 at 1027-1031).

7. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusion #2 and Conclusion #12 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

2. There is sufficient evidence to establish a valid *Walton* right as described in the Findings of Fact and the Water Right Claim Descriptions. ~~as to a portion of the claims.~~

12. ~~For some of the property, t~~ The current use was developed within a reasonable time after the claimed date of appropriation.

Reason for Modifications: The evidence on the record, as described in the modified Findings of Fact and the application of the appropriate legal bases to the evidence on the record, as described in the modified Opinion section, below, supports conclusions other than those in the Proposed Order.

8. **Opinion.** The Proposed Order's "Opinion" section is replaced in its entirety.

OWRD incorporates into this Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS and the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

Claimants have the burden of establishing their claim by a preponderance of the evidence. ORS 539.110; 183.450(2); *see Cook v. Employment Div.*, 47 Or App 437 (1980). (In the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact-finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

Except as described below, the Findings of Fact establish that the elements of a *Walton* right have been met for the lands that the United States continues to claim in Claims 301 and 303 through 307, and that the elements of a Klamath Termination Act right has been

met for the lands claimed in Claim 302. Each of the described allotments was on land formerly part of the Klamath Indian Reservation. Each of the described allotments was allotted to a member of the Klamath Tribes, or for Klamath Termination Act claims, was retained by the Klamath Tribes and conveyed to a non-Indian without becoming part of the public domain. Each of the described allotments was either developed prior to transfer from Indian ownership, or was developed within a reasonably diligent period of time following transfer from Indian ownership. Water was applied on most allotments (or unallotted parcels) within four years of transfer to non-Indian ownership. The only exceptions are Allotment 797 in Claim 301, for which there was a maximum interval of five years, and Allotment 693 in Claim 307, for which there was a maximum interval of six years. Given those findings, and under the circumstances as a whole, including the number of acres involved, this constitutes reasonably diligent development.⁵

With respect to Claim 307, the United States claimed 800.9 acres for irrigation in Claim 307. The Proposed Order limited Claim 307 to 521 acres. The Proposed Order rejected the claim for Allotment 693 because beneficial use was developed by the second non-Indian owner, not the first. As described above, and as addressed in OWRD's exceptions to the Proposed Order, the part of Claim 307 that includes Allotment 693 is allowed because Allotment 693 was put to beneficial use with reasonable diligence following transfer from Indian ownership. The two quarter-quarters (NE¹/₄ NE¹/₄ and NW¹/₄ NE, Section 35, Township 30 South, Range 8 East, W.M.) associated with Allotment 693 were excluded from the Proposed Order's place of use listing, however, the total acres approved in the Proposed Order for Claim 307, being 521.0, included the 79.8 acres within Allotment 693. Thus the total number of approved acres including those in Allotment 693 remains 521.0 acres. (Note: the distribution of acres by quarter-quarter was not included in the Proposed Order.)

The Proposed Order rejected the remaining 200.1 acres in Claim 307 because these acres were subject to beneficial use by natural overflow only, and not an artificial point of diversion. The United States did not file exceptions to this portion of the Proposed Order, and in its responses to the Klamath Project Water Users' exceptions, appears to have accepted the Proposed Order's determination on this issue. As a result, this Partial Order of Determination does not address the remaining 200.1 acres in Claim 307.

⁵ The United States insists that the *Walton* line of cases rejects the well-understood principle of application of water to a beneficial use with reasonable diligence. This principle is intended to promote efficient use of water by ensuring that prospective appropriators cannot indefinitely tie up available water without developing it. It is recognized consistently by states that adhere to the doctrine of prior appropriation. The United States contends that the *Walton* cases instead created a wholly new principle, which would arbitrarily determine eligibility for water rights based on the duration of the first non-Indian's ownership, without regard to an objectively reasonable period for development of water. In Claims 303-306, for example, the affected lands were acquired by the first non-Indian owner (an individual) and transferred to the second non-Indian owner (a trust) within four months. Obviously, such a circumstance provides little opportunity for the development of beneficial use of water. By completely disconnecting eligibility for a water right from an objectively reasonable period for development of beneficial use, this "first non-Indian owner" principle serves no purpose other than to arbitrarily devalue the market value of allottee water rights. This issue is addressed more fully in OWRD's GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS, which is incorporated by reference.

In addition to the addressing the elements of a *Walton* claim, the Contestants have raised several other issues that bear on the determination in this matter. These issues are addressed below.

First, it is argued that the United States originally characterized Claim 302 as a *Walton* right, and that the change to a right under the Klamath Termination Act constitutes an impermissible amendment to the claim. So long as the parameters of the water right, such as the amount of water or the land upon which it is to be applied is not increased, however, a change in the legal theory under which a claim is made is not an amendment to the claim that is prohibited under ORS 539.210 and OAR 690-030-0085. A change in legal theory, alone, is permissible in these proceedings, so long as it does not prejudice the ability of the contestants to fairly challenge the evidence or constitute surprise. Such prejudice is not present on the record of this case. The evidence required to prove the elements of the claim is not different in any way that would prevent the parties from conducting meaningful discovery or investigation or finding contrary evidence if it exists. Nor were the parties prevented from meaningful cross-examination of witnesses by this change in legal theory.

Second, it is argued that the United States is precluded from making any of these claims because of a Supplementary Declaratory Judgment and Stipulation of Consent entered into by the United States in 1986 in *United States v. Adair*, Civil No. 75-914-SO, in the United States District Court for Oregon. That stipulation was not offered as evidence in this case, as it should have been. Strictly speaking, therefore, it would be subject to an objection as late-filed. However, Claimant has not objected to its consideration, and instead has chosen to address the argument the stipulation is offered to support. Consequently, that argument is ~~properly before me, and~~ will be here addressed.

The stipulation in question was entered on October 16, 1986 in the U.S. District Court for Oregon to settle the claim of the United States to a reserved water right for 16,377 acres located in the Klamath Forest National Wildlife Refuge. By the stipulation, the parties, including as defendants Donovan L. Nicol, Mark Edward Nicol, Dana Marie (Nicol) Morasch, and the Nicol Land and Cattle Company, agreed to entry of a supplemental judgment in the case. The stipulation also provides that:

[The parties] agree that the Government does not, as to any persons not parties to this stipulation, waive its rights or recede from its position that, by operation of law, it would be entitled to a federal reserved water right with priority date of September 7, 1960. The parties defendant hereto do not waive their rights to claim, assert and perfect any water rights they may have in the litigation area, regardless of their priority dates.

(Contestant Nicholson's Response to Post Hearing Memorandum of United States "Nicholson Response," Attachment 3 at 5.)

The Supplemental Declaratory Judgment agreed to by the Stipulation quoted above contained, *inter alia* the following provisions:

“3. The water right declared by this supplemental judgment pertains to all Klamath Marsh lands *now within the Refuge*, which has a land area of 16,377 acres.” (Nicholson Response, Attachment 3 at 2.)

* * * However, this supplemental judgment will not bind officials of the State as to decisions to be made in their official capacity affecting the rights or interests of nonparties to this litigation. This supplemental judgment will bind State officials acting in their official capacity as to decisions concerning interests within the litigation area affecting actual parties to this litigation and their successors in interest. The parties defendant hereto do not waive their rights to claim, assert and perfect any water rights they may have in the litigation area, regardless of their priority dates.

5. As to all person who are not parties to this action and the judgments entered herein, the Government retains the right to claim a federal reserved water right for the Refuge with a priority date of September 7, 1960.

(Nicholson Response, Attachment 3 at 3.)

“7. Water rights within the litigation area having a priority date prior to July 23, 1985, are not affected by this supplemental judgment.” (Nicholson Response, Attachment 3 at 4.)

The Second Amended Complaint in that case asserted a Federal Reserved Water Right with a priority date of September 7, 1960, based on the provisions of 25 U.S.C. 564w-1(f). While the provision was part of the Klamath Termination Act, 25 U.S.C. 564w-1(f) specified that a portion of the Klamath Indian Reservation would be transferred to the title of the United States, to be administered under the Migratory Bird Hunting and Conservation Stamp Act, 48 Stat 451.

Several observations can be made from the above. First, by its terms the Supplemental Declaratory Judgment only applied to water rights appurtenant to property within the boundaries of the Refuge, as it existed in 1986. It did not purport to bind any of the parties, including the United States, as to any water rights for land outside the Refuge as it then existed. Second, both the United States and the parties defendant, including the Nicols, expressly retained their right to assert against any non-party to the litigation any claims to a water right, including the very water rights that were the subject of the litigation before the court, essentially as if no stipulation had been entered. Third, the Declaratory Judgment, on its face, expressly excluded any water right having a priority earlier than July 23, 1985 from being affected by the Judgment. Finally, the water right asserted in the litigation and governed by the Stipulation and Declaratory Judgment was a

Federally Reserved Water Right administered under the Migratory Bird Hunting and Conservation Stamp Act, placing it in a completely different status than property conveyed to private parties under the Klamath Termination Act.

The property that is subject to these claims was acquired by the United States from private parties, including the Nicols, and Nicol Land and Cattle Company, in 1989 and 1990. The United States has made the claims for water rights for irrigation and stock-watering as successors to the private owners, and has not asserted a Federal Reserved Water Right under the Migratory Bird Hunting and Conservation Stamp Act. By itself, this would tend to exclude the property subject to these claims from the scope of litigation in *Adair*. At the time the Stipulation was entered, the United States had not acquired the property in question. Indeed, In some cases, the property was in the ownership of the very defendants in that case who reserved the right to assert whatever claim they chose against any non-party to the litigation regardless of the stipulation. The United States succeeded to that right when the property was purchased. There is simply no support for the notion that the Supplemental Declaratory Judgment or the Stipulation was intended to convert a *Walton* right with an 1864 priority held by a private party at the time of the Stipulation into a Federal Reserved Water Right with a 1985 priority simply by virtue of its acquisition by the United States for inclusion in the Wildlife Refuge, particularly at the behest of a non-party to the litigation as against whom none of the parties were bound.

Third, it is argued that the water right asserted by the United States is not an agricultural water right for irrigation, but a so-called “wilderness servitude” or other use that is different from the right acquired by the United States. Irrigation use is typically broad enough to encompass the application of water for the growth of plants, without regard to plant type or the end use of the plants. *See* OAR 690-300-0010(26). However, the Contestants are correct that the *Walton* doctrine requires a narrower meaning of irrigation use. Irrigation authorized under this claim is subject to the definition of irrigation use applied by the Ninth Circuit to *Walton* claims: irrigation under a *Walton* right is that which is “essential to agricultural needs.” *See United States v. Adair*, 723 F.2d 1394, 1415 (9th Cir. 1983).

The Contestants have failed to prove, however, that the United States has abandoned the claimed *Walton* rights by its use of water on the claimed lands since the United States’ acquisition of the property. The evidence shows that the United States has continued to graze cattle on all of the claimed lands on a rotational basis. This is sufficient to establish continued intent to use water for “irrigation” as that term is used in the *Walton* doctrine.

Issues 7 and 14 were raised on the assumption that the claims were for Federally Reserved Water Rights. Since the claims were presented as *Walton* rights, those two issues are inapposite.

Issues 9, 10, 13, 15 and 16 relate to regulation of the water, rather than the establishment of the amount, use and priority of a water right. They are, therefore, not properly before the Oregon Water Resources Department in these proceedings.

Because there is no evidence on the record to the contrary, the standard season of use for irrigation, being March 1 through October 31 of each year as outlined in the GENERAL FINDINGS OF FACT OF THE FINAL ORDER OF DETERMINATION will apply to Claims 301-307. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT OF THE FINAL ORDER OF DETERMINATION will apply to Claim 302; the livestock watering is limited to the maximum number of head claimed, being 500. 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.

Reasons for Modification: To correct and clarify the elements of a *Walton* right; to provide clarity of evidence on the record and provide further support for the conclusions reached herein, especially pertaining to beneficial use of water prior to transfer from Indian ownership and beneficial use of water being made with reasonable diligence after transfer to non-Indian successors; to correct the basis used to evaluate a period of non-Indian ownership in Allotment 449; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

9. **Order.** The "Proposed Order" section of the Proposed Order is deleted in its entirety and replaced with the Water Right Claim Description, below.

Reason for Modifications: To provide consistency with the modified Findings of Fact, Conclusions of Law and Opinion sections.

B. DETERMINATION

1. 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 "Issues" is adopted in its entirety.
 - c. The "Evidentiary Rulings" is adopted in its entirety.
 - d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, above.
 - f. The "Opinion" is adopted with modifications, as set forth in Section A.8, 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 Claims 301-307. The Order is presented in a format standardized by OWRD. Consistent with Sections A.6, A.7, and A.8, above, the outcome of the Order has been modified as to recognize rights for irrigation on an additional 0.4 acres for Claim 301 (to correct a scrivener's error), 5677.7 acres for Claim 302, 69.4 acres for Claim 303, 160.0 acres for Claim

304, 320.0 acres for Claim 305, and 319.0 acres for Claim 306; and livestock watering for Claim 302.

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. 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.
4. 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.
5. Based on the file and record herein, IT IS ORDERED that Claims 301 – 307 are approved to the extent set forth in the following Water Right Claim Description.

CLAIM NO. 301

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
 U.S. FISH AND WILDLIFE SERVICE
 911 NE 11TH AVE
 PORTLAND OR 97232

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 30 S, R 9 E and T 30 S, R 10 E

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE: IRRIGATION OF 4859.3 ACRES

RATE OF USE:

UP TO 35.0 CFS EACH FROM PODS 1 AND 2, AND/OR UP TO 49.8 CFS FROM POD 3,
 NOT TO EXCEED A COMBINED RATE OF 60.7 CUBIC FEET PER SECOND (CFS),
 MEASURED AT THE POINTS OF DIVERSION

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/80 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: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	CHOLO DAM	30 S	10 E	WM	18 SW SE
POD 2	CHOLO REDIVERSION	30 S	10 E	WM	19 SE NW
POD 3	ROCK ISLAND DAM	30 S	9 E	WM	24 NE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	9 E	WM	10	SE SE		37.9
30 S	9 E	WM	11	SW SW		37.9
30 S	9 E	WM	11	SE SW		37.7
30 S	9 E	WM	11	SW SE		34.0
30 S	9 E	WM	14	NW NE		37.4
30 S	9 E	WM	14	SW NE		38.8
30 S	9 E	WM	14	NE NW		40.0
30 S	9 E	WM	14	NW NW		40.0
30 S	9 E	WM	14	SW NW		40.0
30 S	9 E	WM	14	SE NW		40.0
30 S	9 E	WM	14	NE SW		40.0

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	9 E	WM	14	NW SW		40.0
30 S	9 E	WM	14	SW SW		40.0
30 S	9 E	WM	14	SE SW		40.0
30 S	9 E	WM	14	NW SE		38.4
30 S	9 E	WM	14	SW SE		39.3
30 S	9 E	WM	15	NE NE		40.0
30 S	9 E	WM	15	NW NE		40.0
30 S	9 E	WM	15	SW NE		40.0
30 S	9 E	WM	15	SE NE		40.0
30 S	9 E	WM	15	NE NW		40.0
30 S	9 E	WM	15	SE NW		40.0
30 S	9 E	WM	15	NE SW		40.0
30 S	9 E	WM	15	NW SW		40.0
30 S	9 E	WM	15	SW SW		40.0
30 S	9 E	WM	15	SE SW		40.0
30 S	9 E	WM	15	NE SE		40.0
30 S	9 E	WM	15	NW SE		40.0
30 S	9 E	WM	15	SW SE		40.0
30 S	9 E	WM	15	SE SE		40.0
30 S	9 E	WM	16	NE SE		24.3
30 S	9 E	WM	16	SW SE		19.2
30 S	9 E	WM	16	SE SE		39.6
30 S	9 E	WM	21	NE NE		40.0
30 S	9 E	WM	21	NW NE		40.0
30 S	9 E	WM	21	SW NE		40.0
30 S	9 E	WM	21	SE NE		40.0
30 S	9 E	WM	21	SE NW		40.0
30 S	9 E	WM	21	NE SW		40.0
30 S	9 E	WM	21	SE SW		37.5
30 S	9 E	WM	21	NE SE		40.0
30 S	9 E	WM	21	NW SE		40.0
30 S	9 E	WM	21	SW SE		37.8
30 S	9 E	WM	21	SE SE		37.9
30 S	9 E	WM	22	NE NE		40.0
30 S	9 E	WM	22	NW NE		40.0
30 S	9 E	WM	22	SW NE		40.0
30 S	9 E	WM	22	SE NE		40.0
30 S	9 E	WM	22	NE NW		40.0
30 S	9 E	WM	22	NW NW		40.0
30 S	9 E	WM	22	SW NW		40.0
30 S	9 E	WM	22	SE NW		40.0
30 S	9 E	WM	22	NE SW		40.0
30 S	9 E	WM	22	NW SW		40.0
30 S	9 E	WM	22	SW SW		37.5
30 S	9 E	WM	22	SE SW		37.2
30 S	9 E	WM	22	NE SE		40.0
30 S	9 E	WM	22	NW SE		40.0
30 S	9 E	WM	22	SW SE		36.1
30 S	9 E	WM	22	SE SE		35.9
30 S	9 E	WM	23	NE NE		38.2
30 S	9 E	WM	23	NW NE		40.0
30 S	9 E	WM	23	SW NE		40.0

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	9 E	WM	23	SE NE		40.0
30 S	9 E	WM	23	NE NW		40.0
30 S	9 E	WM	23	NW NW		40.0
30 S	9 E	WM	23	SW NW		40.0
30 S	9 E	WM	23	SE NW		40.0
30 S	9 E	WM	23	NE SW		40.0
30 S	9 E	WM	23	NW SW		37.3
30 S	9 E	WM	23	SW SW		37.0
30 S	9 E	WM	23	SE SW		32.6
30 S	9 E	WM	23	NE SE		40.0
30 S	9 E	WM	23	NW SE		40.0
30 S	9 E	WM	23	SW SE		36.8
30 S	9 E	WM	23	SE SE		36.9
30 S	9 E	WM	24	NE NW		35.7
30 S	9 E	WM	24	NW NW		38.2
30 S	9 E	WM	24	SW NW		40.0
30 S	9 E	WM	24	SE NW		36.5
30 S	9 E	WM	24	NE SW		35.7
30 S	9 E	WM	24	NW SW		40.0
30 S	9 E	WM	24	SW SW		36.7
30 S	9 E	WM	24	SE SW		35.3
30 S	9 E	WM	25	NE NE		38.6
30 S	9 E	WM	25	NW NE		38.2
30 S	9 E	WM	25	SW NE		31.3
30 S	9 E	WM	25	SE NE		37.1
30 S	9 E	WM	25	NE NW		38.1
30 S	9 E	WM	25	NW NW		38.6
30 S	9 E	WM	25	SW NW		40.0
30 S	9 E	WM	25	SE NW		39.4
30 S	9 E	WM	25	NE SW		22.7
30 S	9 E	WM	25	NW SW		40.0
30 S	9 E	WM	25	SW SW		40.0
30 S	9 E	WM	25	SE SW		39.1
30 S	9 E	WM	25	NE SE		32.6
30 S	9 E	WM	25	NW SE		4.6
30 S	9 E	WM	25	SW SE		32.4
30 S	9 E	WM	25	SE SE		35.2
30 S	9 E	WM	26	NE NE		40.0
30 S	9 E	WM	26	NW NE		38.8
30 S	9 E	WM	26	SW NE		38.8
30 S	9 E	WM	26	SE NE		40.0
30 S	9 E	WM	26	NE NW		37.1
30 S	9 E	WM	26	NW NW		39.0
30 S	9 E	WM	26	SW NW		24.7
30 S	9 E	WM	26	SE NW		37.5
30 S	9 E	WM	26	NE SE		40.0
30 S	9 E	WM	26	NW SE		40.0
30 S	9 E	WM	26	SW SE		40.0
30 S	9 E	WM	26	SE SE		38.6
30 S	9 E	WM	27	NE NE		40.0
30 S	9 E	WM	27	NW NE		40.0
30 S	9 E	WM	27	SW NE		25.8

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	9 E	WM	27	SE NE		28.0
30 S	9 E	WM	27	NE NW		40.0
30 S	9 E	WM	27	NW NW		39.4
30 S	9 E	WM	27	SW NW		4.5
30 S	9 E	WM	27	SE NW		16.5
30 S	9 E	WM	28	NE NE		36.3
30 S	9 E	WM	28	NW NE		15.3
30 S	9 E	WM	36	NW NE		0.5
30 S	10 E	WM	19	SW NW	2	33.4
30 S	10 E	WM	19	SE NW		35.4
30 S	10 E	WM	19	NE SW		36.1
30 S	10 E	WM	19	NW SW	3	31.4
30 S	10 E	WM	19	SW SW	4	30.8
30 S	10 E	WM	19	SE SW		10.9
30 S	10 E	WM	30	NE NW		25.9
30 S	10 E	WM	30	NW NW	1	32.4
30 S	10 E	WM	30	SW NW	2	32.4
30 S	10 E	WM	30	SE NW		33.3
30 S	10 E	WM	30	NE SW		17.8
30 S	10 E	WM	30	NW SW	3	9.5

CLAIM NO. 302

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 29 S, R 9 E and T 30 S, R 9 E

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:

IRRIGATION OF 5677.7 ACRES AND LIVESTOCK WATERING UP TO 500 HEAD

RATE OF USE:

71.06 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

71.05 CFS FOR IRRIGATION FROM POD 3, MEASURED AT THE POINT OF DIVERSION,
AND

0.01 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO
EXCEED 6000 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 1/80 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:

Use	Period
Irrigation	March 1 - October 31
Livestock	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	
POD 3	ROCK ISLAND DAM	30 S	9 E	WM	24	NE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
29 S	9 E	WM	15	NE SW		13.5
29 S	9 E	WM	15	SE SW		20.0
29 S	9 E	WM	15	NW SE		37.2
29 S	9 E	WM	15	SW SE		40.0
29 S	9 E	WM	15	SE SE		20.0
29 S	9 E	WM	22	NE NE		40.0
29 S	9 E	WM	22	NW NE		40.0
29 S	9 E	WM	22	SW NE		40.0
29 S	9 E	WM	22	SE NE		40.0
29 S	9 E	WM	22	NE NW		20.0
29 S	9 E	WM	22	SE NW		20.0
29 S	9 E	WM	22	NE SW		20.0
29 S	9 E	WM	22	SW SW		38.1
29 S	9 E	WM	22	SE SW		40.0
29 S	9 E	WM	22	NE SE		40.0
29 S	9 E	WM	22	NW SE		40.0
29 S	9 E	WM	22	SW SE		40.0
29 S	9 E	WM	22	SE SE		40.0
29 S	9 E	WM	23	NW NW		40.0
29 S	9 E	WM	23	SW NW		40.0
29 S	9 E	WM	23	NW SW		40.0
29 S	9 E	WM	23	SW SW		40.0
29 S	9 E	WM	27	NE NE		40.0
29 S	9 E	WM	27	NW NE		40.0
29 S	9 E	WM	27	SW NE		40.0
29 S	9 E	WM	27	SE NE		40.0
29 S	9 E	WM	27	NE NW		40.0
29 S	9 E	WM	27	NW NW		40.0
29 S	9 E	WM	27	SW NW		40.0
29 S	9 E	WM	27	SE NW		40.0
29 S	9 E	WM	27	NE SW		40.0
29 S	9 E	WM	27	NW SW		40.0
29 S	9 E	WM	27	SW SW		40.0
29 S	9 E	WM	27	SE SW		40.0
29 S	9 E	WM	27	NE SE		40.0
29 S	9 E	WM	27	NW SE		40.0
29 S	9 E	WM	27	SW SE		40.0
29 S	9 E	WM	27	SE SE		40.0
29 S	9 E	WM	28	NE NE		20.0
29 S	9 E	WM	28	SE NE		20.0
29 S	9 E	WM	28	NE SE		16.7
29 S	9 E	WM	28	SE SE		37.9
29 S	9 E	WM	32	NE SE		39.0
29 S	9 E	WM	32	SW SE		32.8
29 S	9 E	WM	32	SE SE		38.7
29 S	9 E	WM	33	NE NE		33.7
29 S	9 E	WM	33	NW NE		31.0
29 S	9 E	WM	33	SW NE		40.0
29 S	9 E	WM	33	SE NE		36.2

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
29 S	9 E	WM	33	SW NW		39.1
29 S	9 E	WM	33	SE NW		40.0
29 S	9 E	WM	33	NE SW		40.0
29 S	9 E	WM	33	NW SW		40.0
29 S	9 E	WM	33	SW SW	1	38.7
29 S	9 E	WM	33	SE SW	2	38.8
29 S	9 E	WM	33	NE SE		36.2
29 S	9 E	WM	33	NW SE		40.0
29 S	9 E	WM	33	SW SE	3	39.0
29 S	9 E	WM	33	SE SE	4	36.1
29 S	9 E	WM	34	NE NE		40.0
29 S	9 E	WM	34	NW NE		40.0
29 S	9 E	WM	34	SW NE		40.0
29 S	9 E	WM	34	SE NE		40.0
29 S	9 E	WM	34	NE NW		40.0
29 S	9 E	WM	34	NW NW		40.0
29 S	9 E	WM	34	SW NW		40.0
29 S	9 E	WM	34	SE NW		40.0
29 S	9 E	WM	34	NE SW		40.0
29 S	9 E	WM	34	NW SW		40.0
29 S	9 E	WM	34	SW SW	1	39.2
29 S	9 E	WM	34	SE SW	2	39.2
29 S	9 E	WM	34	NE SE		40.0
29 S	9 E	WM	34	NW SE		40.0
29 S	9 E	WM	34	SW SE	3	39.4
29 S	9 E	WM	34	SE SE	4	39.6
29 S	9 E	WM	35	NW NE		40.0
29 S	9 E	WM	35	SW NE		40.0
29 S	9 E	WM	35	NE NW		40.0
29 S	9 E	WM	35	NW NW		40.0
29 S	9 E	WM	35	SW NW		40.0
29 S	9 E	WM	35	SE NW		40.0
29 S	9 E	WM	35	NE SW		40.0
29 S	9 E	WM	35	NW SW		40.0
29 S	9 E	WM	35	SW SW	1	39.6
29 S	9 E	WM	35	SE SW	2	39.6
29 S	9 E	WM	35	NW SE		40.0
29 S	9 E	WM	35	SW SE	3	39.6
30 S	9 E	WM	2	NE NE		40.0
30 S	9 E	WM	2	NW NE		40.0
30 S	9 E	WM	2	SW NE		40.0
30 S	9 E	WM	2	SE NE		40.0
30 S	9 E	WM	2	NE NW		40.0
30 S	9 E	WM	2	NW NW		40.0
30 S	9 E	WM	2	SW NW		40.0
30 S	9 E	WM	2	SE NW		40.0
30 S	9 E	WM	2	NE SW		40.0
30 S	9 E	WM	2	NW SW		40.0
30 S	9 E	WM	2	SW SW		40.0
30 S	9 E	WM	2	SE SW		40.0
30 S	9 E	WM	2	NE SE		40.0

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	9 E	WM	2	NW SE		40.0
30 S	9 E	WM	2	SW SE		40.0
30 S	9 E	WM	3	NE NE		40.0
30 S	9 E	WM	3	NW NE		40.0
30 S	9 E	WM	3	SW NE		40.0
30 S	9 E	WM	3	SE NE		40.0
30 S	9 E	WM	3	NE NW		40.0
30 S	9 E	WM	3	NW NW		40.0
30 S	9 E	WM	3	SW NW		40.0
30 S	9 E	WM	3	SE NW		40.0
30 S	9 E	WM	3	NE SW		40.0
30 S	9 E	WM	3	NW SW		40.0
30 S	9 E	WM	3	SW SW		40.0
30 S	9 E	WM	3	SE SW		40.0
30 S	9 E	WM	3	NE SE		40.0
30 S	9 E	WM	3	NW SE		40.0
30 S	9 E	WM	3	SW SE		40.0
30 S	9 E	WM	3	SE SE		40.0
30 S	9 E	WM	4	NE NE		36.3
30 S	9 E	WM	4	NW NE		40.0
30 S	9 E	WM	4	SW NE		40.0
30 S	9 E	WM	4	SE NE		36.3
30 S	9 E	WM	4	NE NW		40.0
30 S	9 E	WM	4	NW NW		40.0
30 S	9 E	WM	4	SW NW		40.0
30 S	9 E	WM	4	SE NW		40.0
30 S	9 E	WM	4	NE SW		40.0
30 S	9 E	WM	4	NW SW		40.0
30 S	9 E	WM	4	SW SW		31.4
30 S	9 E	WM	4	SE SW		40.0
30 S	9 E	WM	4	NE SE		36.1
30 S	9 E	WM	4	NW SE		40.0
30 S	9 E	WM	4	SW SE		40.0
30 S	9 E	WM	4	SE SE		36.0
30 S	9 E	WM	5	NE NE		40.0
30 S	9 E	WM	5	SW NE		25.8
30 S	9 E	WM	5	SE NE		39.9
30 S	9 E	WM	5	SE NW		14.0
30 S	9 E	WM	5	NE SE		33.1
30 S	9 E	WM	9	NE NE		35.8
30 S	9 E	WM	9	NW NE		39.2
30 S	9 E	WM	9	SW NE		7.8
30 S	9 E	WM	9	SE NE		26.6
30 S	9 E	WM	9	NE NW		24.3
30 S	9 E	WM	10	NW NE		40.0
30 S	9 E	WM	10	SW NE		40.0
30 S	9 E	WM	10	NE NW		40.0
30 S	9 E	WM	10	NW NW		40.0
30 S	9 E	WM	10	SW NW		34.8
30 S	9 E	WM	10	SE NW		40.0
30 S	9 E	WM	10	NE SW		20.4

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	9 E	WM	10	NW SW		8.0
30 S	9 E	WM	10	SE SW		33.0

CLAIM NO. 303

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

CLAIM MAP REFERENCE: CLAIM # 303, PAGE 5

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE: IRRIGATION OF 69.4 ACRES

RATE OF USE:

1.73 CUBIC FEET PER SECOND (CFS) FROM POD 4, MEASURED AT THE POINTS OF DIVERSION

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:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 4	30 S	10 E	WM	19	NW NW	160 FEET SOUTH & 800 FEET EAST FROM NW CORNER, SECTION 19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	10 E	WM	19	NE NW		40.0
30 S	10 E	WM	19	NW NW	1	29.4

CLAIM NO. 304

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

CLAIM MAP REFERENCE: CLAIM # 304, PAGE 6

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE: IRRIGATION OF 160.0 ACRES

RATE OF USE:

4.0 CUBIC FEET PER SECOND (CFS) FROM POD 4, MEASURED AT THE POINTS OF DIVERSION

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:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 4	30 S	10 E	WM	19	NW NW	160 FEET SOUTH & 800 FEET EAST FROM NW CORNER, SECTION 19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	9 E	WM	12	SW SW	40.0
30 S	9 E	WM	12	SE SW	40.0
30 S	9 E	WM	13	NE NW	40.0
30 S	9 E	WM	13	NW NW	40.0

CLAIM NO. 305

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

CLAIM MAP REFERENCE: CLAIM # 305, PAGE 6

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE: IRRIGATION OF 320.0 ACRES

RATE OF USE:

UP TO 8.0 FROM POD 3 AND/OR UP TO 5.8 CFS FROM POD 4, NOT TO EXCEED A COMBINED RATE OF 8.0 CUBIC FEET PER SECOND (CFS), MEASURED AT THE POINTS OF DIVERSION

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:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 3	ROCK ISLAND DAM	30 S	9 E	WM	24	NE NW
POD 4		30 S	10 E	WM	19	NW NW 160 FEET SOUTH & 800 FEET EAST FROM NW CORNER, SECTION 19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	9 E	WM	13	SW SW	40.0
30 S	9 E	WM	13	SE SW	40.0
30 S	9 E	WM	24	NW NE	40.0
30 S	9 E	WM	24	SW NE	40.0
30 S	9 E	WM	24	NE SE	40.0
30 S	9 E	WM	24	NW SE	40.0
30 S	9 E	WM	24	SW SE	40.0
30 S	9 E	WM	24	SE SE	40.0

CLAIM NO. 306

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

CLAIM MAP REFERENCE: CLAIM # 306, PAGE 6

SOURCE OF WATER: The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE: IRRIGATION OF 319.0 ACRES

RATE OF USE:

7.98 CUBIC FEET PER SECOND (CFS) FROM POD 3, MEASURED AT THE POINT OF DIVERSION

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:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name		Twp	Rng	Mer	Sec	Q-Q
POD 3	ROCK ISLAND DAM	30 S	9 E	WM	24	NE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	9 E	WM	28	NW NW	39.0
30 S	9 E	WM	28	SW NW	40.0
30 S	9 E	WM	29	NE NE	40.0
30 S	9 E	WM	29	SW NE	40.0
30 S	9 E	WM	29	SE NE	40.0
30 S	9 E	WM	29	SE NW	40.0
30 S	9 E	WM	29	NE SW	40.0
30 S	9 E	WM	29	NW SE	40.0

CLAIM NO. 307

FOR A VESTED WATER RIGHT

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 30 S, R 8 E and T 31 S, R 8 E

SOURCE OF WATER:

LENZ CREEK (A.K.A. BIG SPRINGS CREEK), tributary to the WILLIAMSON RIVER

PURPOSE OR USE: IRRIGATION OF 521.0 ACRES

RATE OF USE:

3.61 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION
(Note: The rate is limited due to the claimed diversion capacity)

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/80 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: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
30 S	8 E	WM	35	SE NW


THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	8 E	WM	35	NE NE		40.0
30 S	8 E	WM	35	NW NE		39.8
30 S	8 E	WM	35	SW NE		36.2
30 S	8 E	WM	35	SE NE		40.0
30 S	8 E	WM	35	NE SE		40.0
30 S	8 E	WM	35	NW SE		40.0
30 S	8 E	WM	35	SW SE	3	39.3
30 S	8 E	WM	35	SE SE	4	39.3
30 S	8 E	WM	36	NE SW		20.3
30 S	8 E	WM	36	NW SW		38.1
30 S	8 E	WM	36	SW SW	1	39.4
30 S	8 E	WM	36	SE SW	2	20.0

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
31 S	8 E	WM	2	NE NE	5	6.8
31 S	8 E	WM	2	NW NE	6	16.4
31 S	8 E	WM	2	SW NE		25.4
31 S	8 E	WM	2	SE NE		40.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication