

BEFORE THE BOARD OF CONTROL OF THE STATE OF OREGON.

WATER DIVISION NO. 2, UMATILLA COUNTY.

IN THE MATTER OF THE DETERMINATION OF THE
RELATIVE RIGHTS TO THE WATERS OF THE SOUTH
BRANCH OF MUD CREEK, A TRIBUTARY OF THE
WALLA WALLA RIVER, UMATILLA COUNTY, OREGON.)

FINDINGS AND ORDER OF DETERMINATION.

-----oOo-----

Now on this 13th day of April, 1910, the above entitled matter coming on for the consideration of the Board of Control of the State of Oregon, upon the evidence and proofs herein, for findings and an order of determination of the relative rights to the waters of said stream and the Board having considered the said evidence and proofs, testimony, documents and instruments filed herein, and being now fully advised in the premises, finds as follows:

(1)

That a proper petition praying for the adjudication of the relative rights to the waters of said South Branch of Mud Creek, a tributary of the Walla Walla River, in Umatilla County, Oregon, signed by R. H. Wellman, a water user on said stream, was heretofore and on the 10th day of May, 1909, filed with the Board of Control of the State of Oregon.

(2)

That upon an investigation the said Board of Control found the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants to the waters of said stream, and thereupon, by order duly made and entered on the 18th day of November, 1909, fixed the 11th day of January, 1910, as the time when the State Engineer of the State of Oregon, would begin an investigation of the flow of said stream and of the ditches diverting water therefrom, and the 14th day of January, 1910, as the time when, and Freewater, Umatilla County, Oregon, as the place where, the Superintendent of Water Division No. 2, would begin the taking of testimony and proofs as to the relative rights of the various claimants to the waters of said stream.

(3)

That pursuant to such order, a notice, setting forth the date when the State Engineer of the State of Oregon would begin the investigation of the flow of said stream, and of the ditches diverting water therefrom, to-wit: the 11th day of January, 1910, and the place and time certain when the superintendent of the water division in which said stream is situated would begin the taking of testimony as to the rights of the parties claiming water therefrom, to-wit: January 14th, 1910, at the office of Hall & Korts, in Freewater, Umatilla County, Oregon, was duly and regularly published in two issues of the Freewater Times, a newspaper printed and published in Freewater, Umatilla County, and having a general circulation in said County, of Umatilla, Oregon; due proof of such publication in said newspaper being now on file in the office of the Board of Control, and a part of the record herein; that said Superintendent of Water Division No. 2, did, on the 10th day of December, 1909, send, by registered mail, a similar notice to each person, firm and corporation claiming the right to the use of any of the waters of said stream, and to each person, firm and corporation owning or being in possession of lands bordering on or having access to said stream, in so far as such claimants could be reasonably ascertained, and that said Superintendent did, enclose with each said notice, a blank form on which said claimant, owner or person in possession, should present in writing all of the particulars necessary for the determination of his rights to the waters of said stream to which he lays claim, due proof whereof, being now on file in the office of the Board of Control and a part of the record herein.

(4)

That pursuant to such notice, a duly qualified assistant to the State Engineer, did proceed to make an examination of said stream and of the works diverting water therefrom, including the measurements of the discharge of said stream and of the carrying capacity of the various ditches and canals diverting water therefrom, and an examination and approximate measurement of the lands irrigated and susceptible of irrigation from said ditches and canals, which said measurements and observations have been reduced to writing and made a matter of record in the office of the State Engineer of the State of Oregon; and that said Superintendent of Water Division No. 2, did, at the time and place in said notice specified, take the testimony and proofs of the claimants to the waters of said stream, said claimants being hereinafter named in the findings as to their respective rights, due proof of such hearing being now on file herein and a part of the record in this cause.

(5)

That upon the completion of the taking of testimony and proofs aforesaid by the said Superintendent of Water Division No. 2, he did, on the 10th day of February, 1910, give notice to each of the claimants to the waters of said stream (hereinafter named in the findings as to their respective rights), by registered mail, that all of the evidence, testimony and proofs of the various claimants would be open to inspection for a period of ten days (Sundays excepted), beginning on February 23rd, 1910, and ending on March 5th, 1910, from 9 to 12:00 o'clock, a.m., and from 1:30 to 5:00 o'clock, p.m., of each day, at the office of Hall & Korts, in Freewater, Umatilla County, Oregon; and that the determination of the Board of Control would be heard by the Circuit Court of the State of Oregon, for Umatilla County; due proof whereof and of the mailing of said notices by registered mail being now on file in this cause and a part of the record herein.

(6)

That pursuant to such notice, the said Division Superintendent did, at the time and place in said notice specified, hold such inspection, due proof whereof being now on file herein.

(7)

That all the evidence, testimony and proofs filed with the said Superintendent in the above entitled matter have been transmitted by him in person to the office of the Board of Control and are now on file in said office.

(8)

That the following named persons and corporations were duly notified as declared in Finding No. 3, herein, but that each and all of them have failed, neglected and refused to file any claim to the waters of said stream, and are in default herein, and have no interest in or claim to the waters of said stream; said persons firms and corporations so being in default herein, with their respective postoffice addresses, being as follows, to-wit:

E. P. Dixon,

Freewater, Oregon.

Mrs. Fred Morris,

Walla Walla, Wash.

James Petrie, estate,

Freewater, Oregon. R. F. D. #2

W. A. Smiley,

Freewater, Oregon. R. F. D. #2

(9)

That no contests or other objections have been filed with said division superintendent, or with the Board of Control and that the time for filing the same has long since expired.

(10)

That the South Branch of Mud Creek is a natural water course, rising in Umatilla County, and flowing toward the Walla Walla River, into the water shed of which it drains, in Umatilla County, Oregon.

(11)

That the soil of the irrigable lands along the said stream is chiefly a light loam and of volcanic ash origin, with a gravel formation underneath, and varies as to quantity of water required to properly irrigate the different tracts; and is chiefly cultivated to alfalfa, for berries, orchards and gardens.

(12)

That each of the several appropriations of water for the purpose of irrigation as hereinafter set forth is limited to an amount of water sufficient for the irrigation and reclamation of the lands described herein as being the lands to which such water is appurtenant.

(13)

That a system of rotation in the use of water, among the appropriators of small amounts of water, in the same neighborhood, has been in use, more or less, upon the said stream, and adds greatly to the duty which said water may be made to perform; and that in the absence of an agreement between such appropriators arranging for such rotation and the manner in which such water shall be used in such rotation, the water master of the water district in which such water is situated, shall arrange such appropriators in groups or systems of rotation, first giving to the appropriator who is first in priority an amount of water equal to the combined appropriations of all the appropriators in said group or system for a length of time bearing the same ratio to the whole time required to make the complete rotation through the whole group of appropriators as the appropriation of said first appropriator bears to the combined appropriations of said appropriators, and shall next serve the next appropriator in priority with a like amount of water for his proportionate time and so on, until all the appropriators in said group are served; then the distribution of the water shall be repeated in the same manner throughout the irrigating season; that in case any two or more of the appropriators in said group of appropriators shall have the same priorities, then the said water master shall distribute the water as between those appropriators having the same priorities to the one whose ditch taps the stream nearest its source first, and the next lower down next and so on; and where two or more appropriators agree as between themselves as to a system and manner of rotation in the use of their water, the said water master shall distribute their water in accordance with such agreement; Provided, and this whole Finding No. 13, is based upon the condition that such arrangement into groups and systems shall not interfere with the prior rights of any appropriator not a member of such group or system.

(14)

That the name of each appropriator of water from said stream, arranged in alphabetical order hereunder, with his postoffice address, and, set opposite such name and postoffice address in the following tabulated statement, the date of relative priority of such appropriation, the amount in cubic feet per second of time of such appropriation, the number of acres to which water is applied and to which it is appurtenant, the use to which such water is applied and is now limited, with the season during which such water is used for irrigation and to which such use is now limited, the name of the ditch or ditches through which such appropriation is diverted, and a description of the legal subdivision in which such irrigated land is situated, or of the place where such water is put to a beneficial use, arranged in tabulated form and under a heading indicating the same, are as follows, to-wit:

NAME AND POSTOFFICE ADDRESS OF APPROPRIATOR	DATE OF RELATIVE PRIORITY	AMOUNT CU. FT. PER SEC.	NO. ACRES	USE AND IRRIGATION SEASON	NAME OF DITCH	DESCRIPTION OF LAND OR PLACE OF USE
SOUTH BRANCH OF MUD CREEK						
Cancelled - sp. or Rec. Vol. <u>33</u> P. <u>639</u> Dorsey Franklin Baker, 16 S. 2nd St., Walla Walla, Wash.	1890	.09	7	Irrigation		7 ac. in NE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 19, Tp. 6 N.R. 35 E.W.M. Alluvial soil.
Moses Beauchamp, R. F. D. No. 2, Freewater, Oregon.	1874	.38	20	Irrigation & domestic Apr. 1 to Oct. 1.		20 ac. in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 13, Tp. 6 N.R. 34 E.W.M. $\frac{1}{2}$ gravel and $\frac{1}{2}$ loam <i>Change Place of Use and Pt. of Div. - Sp. Or. Vol. 9, p. 241</i>
J. L. Dennis, R. F. D. No. 1, Lowden, Wash.	1897	.13	10	Irrigation Mar. 1 to Nov. 1.	South	10 ac. in SW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 14, Tp. 6 N.R. 34 E.W.M. light ashy soil.
Mary Dennis, R.F.D. No. 1, Lowden, Wash.	1897	.06	5	Irrigation & domestic Mar. 1 to Nov. 1.	South	5 ac. in NW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 14, Tp. 6 N.R. 34 E.W.M. Light, ashy soil.
Wm. F. Gentry, R.F.D. No. 2, Freewater, Oregon.	1880	.6	24	Irrigation April 1 to October 1.		24 ac. in SW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 19, Tp. 6 N.R. 35 E.W.M. Gravelly soil.
Phil. Murphy, R.F.D. No. 2, Freewater, Oregon.	1883	.33	20	Irrigation April 1 to October 1.		13 ac. in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 7 ac. in NW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 20, Tp. 6 N.R. 35 E.W.M. Sandy soil. <i>ch. pt. of div. Sp. Or. Vol. 11, p. 284</i>
Emma J. Morse, 834 Boyer Ave., Walla Walla, Wash.	1890 1900 1909	.46 .32 1.8	37 25.3	Irrigation " Power (2 H.P.)		18 ac. in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 24.8 ac. in SW $\frac{1}{4}$ SE $\frac{1}{4}$; 19.5 ac. in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 14, Tp. 6 N.R. 34 E.W.M. Light ash.
Herman Markham, R. F. D. No. 1, Freewater, Oregon.	1885 1904	.25 1.13	20 90	Irrigation May 15 to Aug. 15.		40 ac. in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 20 ac. in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 18; 10 ac. in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 40 ac. in NW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 19, Tp. 6 N.R. 35 E.W.M. Light ash.
Wilhelmina Petri, R.F.D. No. 2, Freewater, Oregon.	1890	.37	22.3	Irrigation April 1 to Nov. 1.		14 $\frac{1}{2}$ ac. in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 28; 7.8 ac. in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 29; Tp. 6 N.R. 35 E.W.M. Sandy soil.
Roy Records, R. F. D. No. 2, Freewater, Oregon.	1889 1901	.06 .5	5 40	Irrigation Feb. 1 to Dec. 1.		20 ac. in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 25 ac. in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 20, Tp. 6 N.R. 35 E.W.M. Light loam soil. <i>25 Ac. Trs & chg. pt. div Sp. Or. Vol. 18, p. 246</i>
G. E. Sandrock, R. F. D. No. 2, Freewater, Oregon.	1890	.46	13	Irrigation April 1 to Nov. 1.		13 ac. in S $\frac{1}{2}$ SE $\frac{1}{4}$ of SE $\frac{1}{4}$; Sec. 20, Tp. 6 N.R. 35 E.W.M. Clear soil - no rocks.
W. H. Witherrite, R. F. D. No. 2, Freewater, Oregon.	1884 1909	.58 4.69 (4 H.P.)	35	Irrigation & domestic Apr. 1 - Oct. 1. Power - Oct. 15 - Apr. 1.	South	35 ac. in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 14; Tp. 6 N.R. 34 E.W.M. Light gravelly soil.

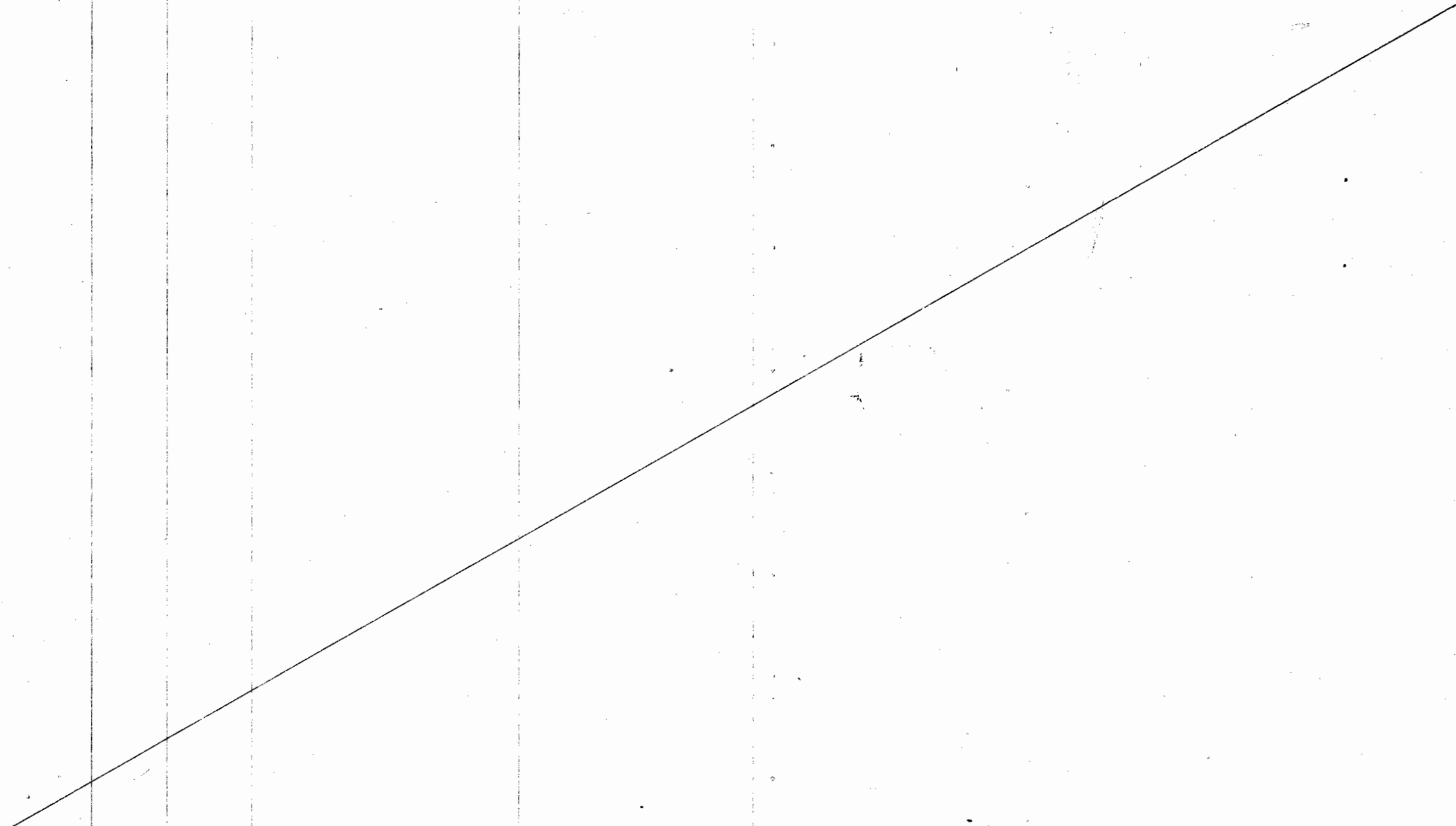
Superseded by
Ord. No. 28039

Superseded by
Ord. No. 48485 & 54122

361544
49477a
49137

Order Record=Board of Control=State of Oregon

	NAME AND POSTOFFICE ADDRESS OF APPROPRIATOR	DATE OF RELATIVE PRIORITY	AMOUNT CU. FT. PER SEC.	NO. ACRES	USE AND IRRIGATION SEASON	NAME OF DITCH	DESCRIPTION OF LAND OR PLACE OF USE
45	W. C. Weathers, R. F. D. No. 2, Freewater, Oregon.	1890 1905	.03 .13	2 10	Irrigation Apr. 1 to Nov. 1.	Petri	12 ac. in $N\frac{1}{2}SE\frac{1}{4}$ of $SE\frac{1}{4}$; Sec. 20, Tp. 6 N.R. 35 E.W.M. Light, sandy soil.
46	Richard H. Wellman, R. F. D. No. 2, Freewater, Oregon.	1867 1903	.68 .4	27 16	Irrigation & domestic Apr. 1 to Oct. 1st.		15 ac. in $SW\frac{1}{4}SW\frac{1}{4}$; Sec. 18; 10 ac. in $NE\frac{1}{4}NW\frac{1}{4}$; and 2 ac. in $NW\frac{1}{4}NW\frac{1}{4}$; Sec. 19; Tp. 6 N.R. 35 E.W.M. Gravelly soil. 16 ac. in $SE\frac{1}{4}NW\frac{1}{4}$; Sec. 19, Tp. 6 N.R. 35 E.W.M. Gravelly soil.
47	H. M. Williams, R. F. D. No. 2, Freewater, Oregon.	1890	.27	16	Irrigation & domestic		16 ac. in $S\frac{1}{2}NE\frac{1}{4}$ of $SE\frac{1}{4}$; Sec. 20, Tp. 6 N.R. 35 E.W.M. Light, sandy soil, free from gravel.



Order Record=Board of Control=State of Oregon

(15)

That all appropriations of water from said stream as found in Finding No. 14 herein, are limited to a beneficial use by the appropriator for the purposes therein specified.

(16)

That the use of water for domestic purposes includes household use and water for live stock throughout the year.

(17)

That all appropriations of water from said stream for domestic purposes, as found in Finding No. 14 herein, are limited to a sufficient amount for the needs of the appropriator, not to exceed the rate of one-fortieth (1/40) cubic feet per second of time to each one thousand (1000) head of stock; Provided, that the amount of water for irrigation specified in Finding No. 14 herein, includes the water for domestic purposes to which such appropriation is entitled during the irrigating season.

By order of the Board of Control of the State of Oregon, made at a regular meeting of said Board, commenced and held on the 13th day of April, 1910.

BOARD OF CONTROL OF THE STATE OF OREGON.

John H. Lewis, State Engineer,
President of the Board.

W. L. Holgate, Superintendent,
Water Division No. 1.

F. M. Dutton, Superintendent,
Water Division No. 2.

ATTEST.

James L. Chinnock
Secretary Board of Control,
State of Oregon.