

KLAMATH COUNTY

SUPPLEMENTAL FINDINGS AND
ORDER OF DETERMINATION
ESTABLISHING INCHOATE WATER RIGHTS

Now on this 17th day of November, 1920, the above entitled matter coming on for the consideration of the State Water Board, on the evidence and testimony heretofore taken and the same having been fully considered, and it appearing that it is now necessary to make findings of fact and an order of determination, establishing rights heretofore reserved for final determination, and said Board being now fully advised in the premises, now makes the following as its

FINDINGS AND ORDER OF DETERMINATION

1.

That under the findings of fact and order of determination of said Board entered September 28, 1915, as confirmed by decree of the Circuit Court of the State of Oregon for Klamath County dated January 21, 1916, it was determined that claimants D. G. Brown, A. J. Brown, C. O. Brown, F. G. Brown and S. A. Brown initiated in the year 1908 a right of appropriation of the waters of said Cherry Creek, in compliance with law, for the purpose of irrigating 430 acres of land, but that the water had not at that time been beneficially applied to said lands. That said decree provided that said lands be reclaimed and the water applied to beneficial use thereon, on or before September 1, 1917, and that after the expiration of said time the proper state officer should take proof as to the extent to which said inchoate rights had been completed, and to that extent the said claimants should be entitled to a vested water right and to the issuance of a water right certificate confirming the same.

2.

That after the expiration of said time, said claimants were duly notified by registered mail, that thereafter and on September 19, 1919, the State Water Superintendent would make an examination of the said lands and receive evidence and proof of the reclamation thereof and the application of water to beneficial use, in accordance with the terms of said decree. That at said

time the State Water Superintendent did make such examination and take such evidence and proof, and thereafter made and filed with the State Water Board, his report and recommendations as to the extent of the completion of said inchoate rights.

3.

That thereafter objections were filed by Miss Jessie P. Rose, holder of a water right on said Cherry Creek subsequent to the right of said Browns, against the allowance of water rights to said Browns as set forth and recommended in the report of the State Water Superintendent. That thereafter Jessie P. Rose and the Browns were duly notified by registered mail of a time and place when hearings would be had on said contest, namely, at the office of the State Water Board in Salem, Oregon, on Wednesday, April 14, 1920, at 2:00 P. M. That at said time said parties appeared and offered evidence and oral testimony in the matter, and thereupon entered into a stipulation in settlement of the said contest. All of which more fully appears in the record herein.

4.

That from the evidence before the Board at this time it appears that said D. G. Brown, A. J. Brown, C. O. Brown, F. G. Brown and S. A. Brown have applied the waters of Cherry Creek to a total of 372 acres of the 430 acres of land allowed an inchoate water right by said former decree. That a considerable portion of said lands are not cleared, being covered with the natural forest growth interspersed with natural openings and meadows. That the method of use of the water is by diverting the same into constructed ditches, as well as natural water courses, and running it down through the timber and flooding the lands. That the effect of such system of irrigation is to produce a heavy growth of grass, which is used as pasturage for stock, and which at the time of the year that it is used would be of little value for stock feed without such irrigation. That the Board is of the opinion that such use of water is a beneficial use, and that the said claimants are entitled to a completed and vested right of appropriation of the waters of Cherry Creek for a total of 372 acres of land, in addition to the right for the irrigation of 90 acres of land which was granted said claimants under the former decree.

5.

That the name and address of such appropriators, together with the date of priority of the appropriation, the amount of water in cubic feet per second to which such appropriation is entitled, number of acres to which water is applied, uses for which said water is applied, name of the ditch through which the water is diverted, the stream from which the appropriation is taken, and a description of the land upon which the water is used, are as follows, to-wit:

CHERRY CREEK -2-.

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
5126 D.G. Brown A.J. Brown C.O. Brown F. G. Brown, and S. A. Brown, by F. G. Brown, Agent Crystal, Ore.	1908	4.65	372	Irrigation Domestic and Stock	Brown	Cherry Creek	40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 23 30 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 36 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 38 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 20 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24; 40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 25; 30 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 15 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 25 acres in S $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 18 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26; T 34 S. R. 6 E. W. M.

6.

That as to the rights of said Jessie P. Rose, it appears that her rights are held by virtue of a State Engineer's permit (Permit No. 731), and that the appropriation thereunder has not as yet been completed. Such rights shall be governed and determined by the statutes of the State of Oregon and the regulations of the State Engineer appertaining to such permits.

7.

That the stipulation entered into between said Browns and said Rose at the hearing held before the Board April 14, 1920 on the contest between them, provides for a method of rotation in the use of the waters of Cherry Creek by them, allowing the Browns the use of all the water to which they are both entitled, for ten days, then Miss Rose the use of the water for four days, and so on in rotation during the entire irrigation season. That in the distribution of water to said parties by the proper state officer, the water shall be distributed in accordance with said stipulation, or any other agreement which may hereafter be made between said parties, provided that in so doing, the rights of any other appropriator are not interfered with.

8.

And the State Water Board being fully advised in the premises, it is hereby CONSIDERED and ORDERED that the parties hereinbefore named have completed their inchoate rights to the use of the waters of Cherry Creek in accordance with and as set out in the foregoing findings, and the same are hereby so determined and established, expressly subject to the provisions of the findings and order of determination of the State Water Board and the decree of the Circuit Court heretofore entered in the above entitled matter; and that said parties are entitled to the issuance of a water right certificate in accordance with law, confirming said rights.

Dated this 17th day of November, 1920.

(SEAL OF STATE WATER BOARD)

STATE WATER BOARD OF OREGON

By Percy A. Cooper,
State Engineer, President

Geo. T. Cochran,
State Water Superintendent.

ATTEST:

R. W. Potter,
Secretary.