

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR LAKE COUNTY.

IN THE MATTER OF THE DETERMINATION OF)	
THE RELATIVE RIGHTS TO THE USE OF THE)	
WATERS OF DREWS CREEK, ANTELOPE CREEK,)	ORDER MODIFYING THE FINDINGS OF FACT
COTTONWOOD CREEK, THOMAS CREEK AND)	AND ORDER OF DETERMINATION OF THE STATE
COGSWELL CREEK, AND THEIR TRIBUTARIES,)	WATER BOARD OF OREGON.
TRIBUTARIES OF GOOSE LAKE.)	

The above entitled cause coming on to be heard before the above entitled Court on the date fixed and advertised therefor by the State Water Board of Oregon, all parties being in Court, and the Goose Lake Valley Irrigation Company having filed an exception to Paragraph 29 of said Findings of Fact and Order of Determination, and J. C. Hotchkiss having applied for permission to file an Amended Statement and Proof of Claimant, and no other exceptions or motions having been filed, the said exception of the Goose Lake Valley Irrigation Company and the said application of J. C. Hotchkiss to file an Amended Statement and Proof of Claimant were submitted and argued to the Court upon written brief, and thereafter, the said J. C. Hotchkiss and all other persons affected by or interested in the proposed Amended Statement and Proof of Claimant, for which application to file had been made by said J. C. Hotchkiss, having made and entered into two separate stipulations, both of which were filed herein on October 18, 1922, to one of which stipulations so filed, being that stipulation signed by the said J. C. Hotchkiss on the one part, and Frank A. Bauers and forty-three other persons on the other part, was attached an Amended Statement and Proof of Claimant, subscribed and sworn to by the said J. C. Hotchkiss on October 6, 1922, and by the terms of which said stipulations it was agreed that the said J. C. Hotchkiss should be permitted to file said last mentioned proposed Amended Statement and Proof of Claimant attached to said stipulation, in lieu of the amended statement and proof of claimant theretofore proffered to be filed herein by said J. C. Hotchkiss, and that upon the filing of the same it should be taken and considered as filed herein as and for the statement and proof of claimant of said J. C. Hotchkiss in the above entitled proceedings, and that thereupon, this Court should by decree, modify the Findings of Fact and Order of Determination of the State Water Board in said proceedings in so far as the same affect the rights and claims of the said claimant, J. C. Hotchkiss, and the other persons signing said stipulation, so as to make said Findings and Order of Determination of said Board conform to

GOOSE LAKE 1.

the allegations contained in said proposed Amended Statement and Proof of Claimant, attached to said stipulation, and thereupon, to pass a decree affirming such Findings of Fact and Order of Determination as so modified by said Court, the sole purpose and intent of said parties to said stipulations being to authorize the Court to change the several dates of the relative priorities of said J. C. Hotchkiss to the use of the waters of Bauers Creek, Spring Creek and Antone Creek, by fixing and making April 1, 1879, and no other date, as his date of relative priority upon all of his irrigated lands as shown on Exhibit A, in said proposed Amended Statement and Proof of Claimant last above mentioned, and also to eliminate from such Order of Determination any claim by, or award to said J. C. Hotchkiss of any rights to the use for irrigation of any of the waters of that particular stream designated as Cox Creek, on said Exhibit A, and also to correctly show the location of Spring Creek Ditch on said Exhibit A, and also to show the correct location thereon of The Heryford Ditch; and also to prescribe the manner of the use of waters by W. H. Mendell and J. A. Morris; and the claimants, Howard Cattle Company, a corporation, on the one part, and A. M. Smith, Edith M. Smith, Arthur E. Perkins and Otha D. Perkins, on the other part, also, on the 5th day of October, 1922, having entered into and filed a stipulation and agreement in the above entitled proceedings for the purpose of more definitely stating the extent of the rights claimed by said Howard Cattle Company than the same are set forth in said Findings and said Order of Determination, by said Water Board, and no other exceptions or motions having been filed, and the Court thereafter, having made and entered a decree herein modifying said Findings of Fact and Order of Determination of said Water Board, which decree was, on the 27th day of March, 1923, entered at Pages 71, 72, 73, and 74 of Volume 12, of the Journal of this Court, in which decree this Court inadvertently omitted to incorporate and fully and correctly set forth the matters and things stipulated and agreed upon in the various stipulations hereinbefore referred to, and the attention of the Court having been called and directed to such matters so inadvertently omitted from said decree, and the Court after having further considered all matters involved in the above entitled matter and at this time being fully advised in the premises;

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. That said decree heretofore made and entered herein by the Court in the above entitled matter, and on the 27th day of March, 1923, entered at pages 71, 72, 73, and 74 of Volume 12 of the Journal of said Court, be, and the same hereby is, vacated, revoked, and set aside.

GOOSE LAKE - Modified - 2.

2. Paragraph No. 29 of said Findings of Fact and Order of Determination of said Water Board down to the description of lands upon which waters may be used under the appropriations of the Goose Lake Valley Irrigation Company is modified to read as follows:

That the Goose Lake Valley Irrigation Company has filed statements and proofs of claim in these proceedings, claiming water rights from Drews, Antelope, Cottonwood and Thomas Creeks and their tributaries. That the rights of said Company as initiated in the year 1874 for lands now in the Drews Creek Reservoir are described and set forth in Paragraph 11 hereof.

That said Company claims rights under a notice of appropriation posted January 21, 1907, and recorded January 22, 1907, signed by Creed H. McKendree, to the storage of 80,000 acre feet of the waters of Drews Creek in Drews Reservoir, and to the appropriation of 300 second feet of the waters of Drews Creek, 100 second feet of the waters of Willow Creek, 100 second feet of the waters of Antelope Creek, 50 second feet of the waters of Muddy Creek, and 200 second feet of the waters of Thomas Creek.

Said Company also ~~claims~~ rights under a notice of appropriation posted July 31, 1908, and recorded August 5, 1908, signed by Oregon Valley Land Company, to the storage of 18,000 acre feet of the waters of Cottonwood Creek in a reservoir to be constructed on said stream, and the appropriation of 200 second feet of the waters of Cottonwood Creek and its tributaries. That the general plan of the predecessors of said Company appears to have been the construction of a system of reservoirs and canals and the irrigation eventually of an area of about 60,152.4 acres of land. Two storage reservoirs were to be constructed, one on Drews Creek with a capacity of about 80,000 acre feet, and one on Cottonwood Creek with a capacity of about 18,000 acre feet; the water stored in such reservoirs to be supplemented by the direct flow of the streams crossed by the main canals. It appears that immediately after the formulation of said plan the predecessors of the claimant herein began work on the system, and thereafter prosecuted such work with diligence, and the dam for the Drews Creek Reservoir was completed in the year 1913 to a height sufficient to impound about 65,000 acre feet of water. The main canals of the system have been completed, and about 10,000 acres of land had been irrigated under the system up to the time of the beginning of these proceedings.

That the Goose Lake Valley Irrigation Company therefore has valid appropriations under said notice, and having priority dates of January 21, 1907 and July 31, 1908, respectively, for not to exceed the amounts of water from the various sources as named above. That the lands to be irrigated under such appropriations are hereinafter described. And inasmuch as all of the irrigable lands under said system have not yet been put under irrigation, the 1st day of January, 1928, is hereby fixed as the time within which the water shall be completely applied to beneficial use under said appropriations. And said appropriations shall be limited to the amounts which have been applied to beneficial use from the various sources of supply on or before said date (or such further time as may be granted by the State Water Board for good cause shown). At the expiration of said time or any extension thereof, the said Goose Lake Valley Irrigation Company, or its successors in interest, shall report to the State Water Board, giving an accurate description of the number of acres of land to which water has been applied from each of said sources of supply. And the water rights thereafter confirmed and granted shall remain the property of the Irrigation Company so long as the same is applied to a beneficial use, with the right in said Company to change the place of use under its irrigation system, thereby doing no injury to other water users, and said Company shall be entitled to water right certificate or certificates as evidence thereof in conformity with this decree.

And it appearing that the normal water supply of the streams covered by said appropriations is inadequate to irrigate all of the lands for which said appropriations were made and it being inadvisable that water rights be allowed for an acreage largely in excess of the amount which can be irrigated from said sources, it is considered proper that a limitation be placed on the total amount of land for which water rights may be sold under said system. Therefore it is ordered that said Goose Lake Valley Irrigation Company shall not sell water rights or contract to furnish water for an acreage in excess of that to which it is in a position to deliver an adequate supply of water.

That said Company also has certain rights under and by virtue of permits issued by the State Engineer, Nos. R.299 and 2186, which said appropriations shall be governed by the rules and regulations of the State Engineer and the laws pertaining to the proving up and completion of rights under such permits.

That the lands under the irrigation system of said Goose Lake Valley Irrigation Company, and upon which water may be used under the appropriations of 1874, 1907 and 1908 are described as follows:

3. The second paragraph 32 in said findings of fact and order of determination, appearing on Page 40 thereof, is changed by striking out heading number 32 and inserting in lieu thereof the figures 33.
4. That the said proposed amended Statement and Proof of Claimant of said J. C. Hotchkiss, subscribed and sworn to by him on October 6, 1922, and attached to said stipulations which were filed herein on October 18, 1922, shall be, and the same hereby is, taken, considered and deemed as having been filed by him in said proceedings on November 26, 1919, and in lieu of his original statement and proof of claimant filed with the State Water Superintendent in said proceedings, on November 26, 1919, and numbered 316, and that there be, and hereby is added a paragraph to be numbered 34 which shall precede the Paragraph numbered 33 in the findings of fact and order of Determination of the Water Board, as filed in this Court, said new paragraph 34 to read as follows:

The water rights allowed to J. C. Hotchkiss from Bauers, Spring and Antone Creeks, tributaries of Thomas Creek, as said allowance is modified by this decree, shall not be exercised so as to interfere with the use of the waters of said Bauers Creek, or the waters of said Cox Creek by J. A. Morris, assignee of William D. Bishop and W. H. Mendell, or either of them, or the heirs or assigns of either of them, in the manner in which such waters have heretofore been used by the said Mendell and the said Morris as assignee of said William D. Bishop, and their predecessors in interest, but the area of land now and heretofore irrigated by said Morris, as assignee of said William D. Bishop, and said Mendell, and their predecessors in interest, from the waters of said creeks, shall not be increased by them, or either of them, or their heirs or assigns, or any of the heirs or assigns of either of them, except in such manner as may be permitted by law or by the State Engineer of the State of Oregon, and in no event shall any such use of said waters be made by them, or either of them, or any of their heirs or assigns, in derogation of the rights to the use of waters allowed and decreed to said J. C. Hotchkiss, his successors in interest or assigns, in said order of determination as modified by this decree, and all waters diverted or used by said Mendell and said Morris, or either of them, or the heirs or assigns of either of them, shall be returned to the streams from which the same are diverted with a minimum of loss in accordance with good irrigation practice and in the manner in which said waters have heretofore been used and returned to said creeks after having been so diverted and used.

5. There is added a paragraph to be numbered 35, which shall precede the paragraph numbered 33 in the findings of fact and order of determination of the Water Board, as filed in this Court, said new paragraph 35 to read as follows:

The lands upon which Howard Cattle Company, a corporation is entitled to the use of the waters of Drews Creek with date of relative priority of appropriation as of the year 1874, are as follows:

(a) That part of the east half of section 29, in township 38 south, range 17 east of Willamette meridian, lying north and east of the present main channel of Drews Creek; said lands being entitled to the use of a sufficient quantity of said waters, through what is called Tullock Ditch, entirely to irrigate the same, with date of priority as of the year 1874.

(b) All that part of said Howard Cattle Company's lands in the east half of the southeast quarter and the southeast quarter of the northeast quarter of section 29, in township 38 south, range 17 east of the Willamette meridian lying south and west of the present main channel of Drews Creek, and below the point of diversion of the ditch called Tullock Ditch No. 2, which point of diversion is on Drews Creek, near the center of the northeast quarter of the northeast quarter of section 29; said lands being entitled only to the use of a sufficient quantity of said waters through said Tullock Ditch No. 2, partially to irrigate the same, with date of priority as of the year 1874, the remainder of the waters necessary to the complete irrigation thereof being derived through a fork of Drews Creek, with date of priority of appropriation as of the year 1888.

6. Heading number 33 appearing in said order of determination and findings of fact of the State Water Board, as filed in this Court, shall be stricken out and in lieu thereof the figures 36 shall be inserted.

7. In the tabulation of water rights under the heading "Thomas Creek" appearing on Page 60 of said findings of fact and order of determination of the Water Board, the finding and order as to water rights of J. C. Hotchkiss, Lakeview, Oregon, is modified to read as follows:

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
Howard Cattle Co.,	continued.						40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 2.5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 21.3 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8.5 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 37.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29. T. 38 S. R. 17 E.W.M.
	1888				Dams in Sec. 29 T 38 S.R.17 E. 29 T. 38 S.R.	Stephenson Creek	
				(For lands in SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 17 E.)			
	1892		142.2	Irrigation	Dams	Quartz Creek & Angel Camp Creek	5.8 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 2.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 7.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 21.6 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 6. acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34. T. 37 S.R. 16 E.W.M.
				(Note; NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 1, T. 38 S. R. 16 E irrigated from both Creeks, remainder from Quartz Creek)			31 adres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 1. 16.6 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 5.4 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 26.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 11.3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 6.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 1.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2. T. 38 S. R. 16 E. W. M.

GOOSE LAKE - Modified - 8.

The lands upon which Howard Cattle Company, a corporation is entitled to the use of the waters of Drews Creek with date of relative priority of appropriation as of the year 1874, are as follows:

"(a) That part of the east half of section 29, in township 38 south, range 17 east of Willamette meridian lying north and east of the present main channel of Drews Creek; said lands being entitled to the use of a sufficient quantity of said waters, through what is called Tullock Ditch, entirely to irrigate the same, with date of priority as of the year 1874.

(b) All that part of said Howard Cattle Company's lands in the east half of the southeast quarter and the southeast quarter of the northeast quarter of Section 29, in township 38 south, range 17 east of the Willamette meridian lying south and west of the present main channel of Drews Creek, and below the point of diversion of the ditch called Tullock Ditch No. 2, which point of diversion is on Drews Creek, near the center of the northeast quarter of the northeast quarter of said section 29; said lands being entitled only to the use of a sufficient quantity of said waters, through said Tullock Ditch No. 2 partially to irrigate the same, with date of priority as of the year 1874, the remainder of the waters necessary to the complete irrigation thereof being derived through a fork of Drews Creek with date of priority of appropriation as of the year 1888."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that as modified in this decree, the Findings of Fact and Order of Determination of the State Water Board in this cause be, and the same hereby is, affirmed.

G. F. Skipworth
Circuit Judge.

Dated at Eugene, Oregon, May 15, 1923.

NOTE: For convenience the modifications made by the foregoing decree have been made on the following copy of the order of the State Water Board, appearing on pages 25, 40, 42, & 60 thereof.