

BEFORE THE STATE ENGINEER OF OREGON

Wasco County.

IN THE MATTER OF THE DETERMINATION OF)
THE RELATIVE RIGHTS TO THE USE OF THE)
WATERS OF THREE MILE (OR HOLMAN) CREEK)
AND ITS TRIBUTARIES, A TRIBUTARY OF)
COLUMBIA RIVER.)

FINDINGS AND ORDER
OF
DETERMINATION.

Now at this time the above entitled matter coming on for consideration by the State Engineer, and it appearing that all evidence and testimony has been taken in the above entitled proceeding, and the State Engineer having carefully considered all of such evidence and testimony, and the engineering data and information gathered in accordance with law, and being now fully advised in the premises, makes and orders to be entered of record in his office the following:

FINDINGS AND ORDER OF DETERMINATION

1.

That on the 2nd day of June, 1924, there was filed in the office of the State Engineer, a petition signed by G. E. Sanders and R. Renken, requesting the determination of the relative rights of the various claimants to the waters of Three Mile (or Holman) Creek, and its tributaries, a tributary of Columbia River, both of the said petitioners being water users on the stream named in their petition. That the State Engineer, after a full investigation and due consideration of said petition, finding the facts and conditions such as to justify it, made and entered an order fixing a time for the beginning of such examinations and investigations and surveys as would enable him to determine the relative rights of the various claimants to the use of the waters of Three Mile (or Holman) Creek and its tributaries.

2.

That a notice was prepared by said State Engineer setting forth the date when he, or his assistants, would begin the investigation of the flow of said stream and its tributaries, and the ditches diverting water therefrom. That the time when the State Engineer or his assistants should begin the examination of said stream, and its tributaries, was set for the 1st day of December, 1924. That at the time so specified, duly qualified assistants of the State Engineer did proceed to make an examination of said stream and its tributaries, and of the ditches and canals diverting water therefrom, and of the land irrigated by the waters of said stream or its tributaries, which observations and measurements were reduced to writing and made a matter of record in his office. And the State Engineer did cause to be prepared a set of maps or plats, on a scale of measurement of four inches to the mile, showing with substantial accuracy the course of

said stream and its tributaries, the location of the various ditches diverting water therefrom, and the number of acres of land which had been irrigated in each legal subdivision; blue prints of said maps and plats being now on file and a part of the record herein.

3.

That after said examination and measurements were completed, a notice was prepared by the State Engineer setting a time and place certain when he would begin the taking of testimony as to the relative rights of the various claimants to the use of the waters of said stream, and said notice was published in two issues of The Dalles Chronicle, a newspaper published daily at The Dalles, Wasco County, Oregon, and of general circulation in said county; said two issues being those of May 4th and 5th, 1925, and the date of the last publication of said notice being more than thirty days prior to the date fixed for the beginning of the taking of testimony by the State Engineer.

4.

That on the 9th day of May, 1925, the State Engineer did send by registered mail to each person, firm, or corporation claiming a right to the waters of said stream, or any tributary thereof, and to each person, firm or corporation owning or being in possession of land bordering on or having access to said stream, or its tributaries, insofar as the names of said claimants, owners, firms or corporations could be reasonably ascertained, a notice similar to such published notice, setting forth a time and place when the State Engineer would commence the taking of testimony as to the relative rights of the various claimants to the waters of said stream, or its tributaries. And said State Engineer did enclose with each of said notices a blank form upon which said claimant or person in possession could present in writing all the particulars necessary for the determination of his rights to the waters of said stream, under oath.

5.

That the times and places when and where the said State Engineer or his duly authorized assistants should attend and take the testimony of the various claimants, were fixed as follows, to-wit:

On Wednesday, the 10th day of June, 1925, in the Circuit Court Room of the County Court House at The Dalles, Wasco County, Oregon;

And for a period of 20 days beginning Monday, June 15th, 1925, at the office of the State Engineer in the Capitol Building, at Salem, Oregon.

6.

That during the period so specified in said notice for the taking of testimony and statements and proofs of claim, claims to the use of the waters of said

stream, or its tributaries, were filed by the following parties, to-wit:

Anderson, Alfred E., Route 1, The Dalles, Ore.
Bell, C. W., Route 1, The Dalles, Ore.
Cyphers, F. C., Motor Route A., The Dalles, Ore.
Fuller, Mrs. Nettie, Motor Route A., The Dalles, Ore.
Fuller, Geo. N., Motor Route A., The Dalles, Ore.
Kaufman, Adam, R.F.D. #1, The Dalles, Ore.
Mayfield, Ferries, 616 E. Second St., The Dalles, Ore.
Obrist, Sarah M., Route 1, The Dalles, Ore.
Pease, Edward C., Trustee, The Dalles, Ore.
Pick, Wm., R.F.D. #1, The Dalles, Ore.
Rawson, W. W., Route #1, The Dalles, Ore.
Saunders, G. E., Route #1, The Dalles, Ore.

7.

That the following named persons were duly notified by registered mail and by publication of said notice as hereinbefore set forth, and that each of them, although so notified, has failed, neglected and refused to appear herein and submit proof of a right to the use of the waters of said stream or its tributaries, if any they have or claim, and that such parties are in default, and that such default is here and now entered against them, and each of them, and said parties are hereby enjoined and inhibited from using or asserting any rights to the use of the waters of said stream, or any tributary thereof, except by, through or under the rights of the persons whose water rights are defined herein, or under and by virtue of permits issued by the State Engineer:

Befenger, Mr., The Dalles, Ore.
Bettinger, A., The Dalles, Ore.
Brackett & Son, The Dalles, Ore.
Bracket, J. R., R.F.D. #1, The Dalles, Ore.
Brookes, T. V., R.F.D. #1, The Dalles, Ore.
Brooks, Caleb, The Dalles, Ore.
Chandler, Jessie J., The Dalles, Ore.
Comini, Giovanni, The Dalles, Ore.
Cock, Chas. E., The Dalles, Ore.
Creighton, David, The Dalles, Ore.
Dalles Meat Co., The Dalles, Ore.
Elton, Eugene B., R.F.D. #1, The Dalles, Ore.
Frazer, Alexander, R.F.D. #1, The Dalles, Ore.
Fuller, G. M., The Dalles, Ore.
Gitchell, W. F., The Dalles, Ore.
Hardeson, Gabriel, The Dalles, Ore.
Hendrix, Ed U., Jackson St., The Dalles, Ore.
Kelly, L. D., Maupin, Ore.
Moore, G. W., The Dalles, Ore.
Moore, Garfield C., The Dalles, Ore.
Moore, H. W., 7406 Sheridan Road, Chicago, Ill.
Morgan, Lester J., The Dalles, Ore.
Phillip, Herschell M., The Dalles, Ore.
Potts, G. A., The Dalles, Ore.
Putt, F. T., Northwestern Electric Co., Portland, Ore.
Reinke, Joseph F., R.F.D. #1, The Dalles, Ore.
Renken, Richard, R.F.D. #1, The Dalles,
Sauter, Edwin A., R.F.D. #2, The Dalles, Ore.
Sauter, Franklin C., R.F.D. #2, The Dalles, Ore.
Sauter, F. C., R.F.D. #2, The Dalles, Ore.
Seufert Bros., The Dalles, Ore.
Seufert, Edw., The Dalles, Ore.
Sexton, LeRoy, The Dalles, Ore.
Sharp, E. F., The Dalles, Ore.
Stuart, Maggie, The Dalles, Oregon.
Sufert, F. E., The Dalles, Ore.
Thornkyke, Jas., Bell Lbr Co., Longview, Wash.
Tibbits, Floyd, R.F.D. #1, The Dalles, Ore.
Wasson, Thos., The Dalles, Ore.
Watts, F. H., The Dalles, Ore.
Wetty, Jacob, The Dalles, Ore.
Whitney, James, The Dalles, Ore.

That upon the completion of the taking of such testimony and claims, the State Engineer did on the 15th day of July, 1925, give notice by registered mail to each of the various claimants to the use of the waters of said stream, or its tributaries, that at the times and places named in the said notice, to-wit:

On Thursday, July 30th, 1925, in the Circuit Court Room of the County Court House at The Dalles, Wasco County, Oregon,

And for a period of 10 days beginning with Monday, the 3d day of August, 1925, and ending with Thursday, the 13th day of August, 1925, (Sundays excepted) at the office of the State Engineer in the Capitol Building at Salem, Oregon,

the testimony and proofs of claim would be open to public inspection by the various claimants or owners. That a duly authorized representative of said State Engineer did, in accordance with said notice, keep said evidence and claims open to inspection at the times and places aforesaid.

That said notice did also state therein the county in which the determination of the State Engineer in said matter would be heard by the Circuit Court of the State of Oregon, to-wit: The County of Wasco.

That due proof of the sending of said notice by registered mail, and the holding of said inspection, has been made and filed as a part of the record herein.

That within the time fixed by law therefor, the following contests were initiated by the filing with the State Engineer of notices of contest in writing:

1. C. W. Bell and Edward C. Pease, Trustee, Contestants, v. Sarah M. Obrist, Contestee.
2. C. W. Bell and Edward C. Pease, Trustee, Contestants, v. George N. Fuller, Contestee.

That after the filing of said statements of contest, the State Engineer did fix a time and place for the hearing of each of said contests, and did on the 23d day of September, 1925, serve notice of hearing of said contests on each of the parties to said contests, the date fixed for hearing being more than thirty days and less than sixty days from the date the notice of hearing was served upon said parties. That due proof of serving of said notices has been made and filed as a part of the record herein.

That upon the date as fixed for said hearing, to-wit: October 29, 1925, at the hour of 10 o'clock A. M., in the Circuit Court Room of the County Court House at The Dalles, Wasco County, Oregon, the taking of testimony upon said contests was commenced before a duly authorized reporter and continued until all of said contests were fully heard, settled, or otherwise disposed of.

Contest No. 1:

C. W. Bell and Edward C. Pease, Trustee,
 Contestants,
 v.
 Sarah M. Obrist,
 Contestee.

This contest came on for hearing and testimony was taken therein.

Contestee in her claim asserted a right to the waters of Three Mile Creek with priority of 1880 for domestic and stock use and the irrigation of .75 acre of land. The testimony produced, however, failed to show that Contestee or her predecessors in interest had made any use of the waters of Three Mile Creek for irrigation purposes, sufficient to establish the right claimed. The claim is therefore denied.

It appears, however, that Contestee has an incompleated water right under State Engineer's Permit No. 6227, for the appropriation of 0.13 cubic foot of water per second from Three Mile Creek and seven springs for domestic use and the irrigation of 6 acres of land, with priority of Feb. 25, 1924. Under this filing Contestee shall have such rights as are provided by law, and as completed and perfected under the rules and regulations of the State Engineer.

Contest No. 2:

C. W. Bell and Edward C. Pease, Trustee,
 Contestants,
 v.
 George N. Fuller,
 Contestee.

This contest came on for hearing as hereinbefore indicated, Contestants appearing in person and by their attorney, together with witnesses, and Contestee appearing not. As against Contestants, Contestee is therefore in default, and his rights are hereby determined to be subsequent and inferior to those of Contestants, and the water master shall distribute the water accordingly, as between said parties. As against other parties, however, Contestee's rights shall be administered according to his priorities as set forth in the tabulation hereinafter contained.

That Three Mile (or Holman) Creek rises in the northwestern extremity of Wasco County and flows in a northeasterly direction, emptying into the Columbia River near The Dalles. That the land irrigated from said stream and its tributaries is arid land, and irrigation is necessary for the raising of profitable crops. That this stream and its tributaries are perennial streams, and their waters are subject to appropriation under the laws of the State of Oregon.

13.

That the rights to the use of the waters of Three Mile (or Holman) Creek and its tributaries as herein defined, shall entitle the holders thereof to the use of the quantity of water which can be applied to beneficial use, and such rights shall be limited as follows: The use of water for irrigation purposes shall be confined to an irrigation season from March 1st to October 1st of each year, during which period the water diverted shall not exceed one-sixtieth of a second foot per acre of land irrigated, or a total of three acre feet per acre during each irrigation season, to be measured at the point where the water is diverted from the stream. The basis of determining the quantity to which an appropriator is entitled under the above limitations at the beginning of any particular irrigation season shall be the acreage actually prepared for irrigation and to which water may be beneficially applied in the production of crops.

14.

That the water master of the district in which Three Mile (or Holman) Creek and its tributaries are situated may arrange such system or systems of rotation as may be best applicable to the conditions arising from time to time in the distribution of water on such stream. When two or more appropriators agree between themselves as to a manner and system of rotation in the use of their water, the water master shall distribute such water in accordance with such agreement, providing that in so doing, he does not interfere with the priority rights of any appropriator not a member of such group of system of rotation.

That in case the water flowing in the channel of a stream or ditch sinks or fails to flow down the channel so as to be of beneficial use to an appropriator having the prior right to its use, the water master shall allow the diversion thereof by the next appropriator in order of priority who can make a beneficial use of such water.

15.

That all parties herein allowed the right to the use of water for irrigation shall be entitled to use such water for stock and domestic purposes, provided, that during the irrigation season such appropriators shall not be entitled to divert any water for stock or domestic purposes in addition to the amount which they are entitled to divert for irrigation purposes. That outside of the irrigation season, the right to the use of water for stock and domestic purposes as herein confirmed, entitles the owner of such right to divert and use such a quantity of water as is reasonably necessary for stock and domestic purposes, and to prevent the water in the ditches and channels used for such purposes from being completely frozen; provided, that the amount diverted for stock and domestic uses shall not exceed one-tenth of one cubic foot per second for each family or farm.

That the rights to the use of water for irrigation purposes herein confirmed are appurtenant to the lands herein described, and the rights of use of the waters of said stream and its tributaries by virtue of such rights are limited and confined to the irrigation of the lands described herein to the extent of said lands herein set forth, and the priorities of right herein confirmed confer no right of use of the waters of said stream and its tributaries on any lands other than those specified tracts to which such rights are herein set forth as appurtenant, and each and every person shall be and hereby is prohibited, restrained, and enjoined from diverting and using water from said stream on such other lands without lawful permit first obtained from the State Engineer.

That except as otherwise determined herein, the order of the rights of the respective appropriators of the waters of said stream and its tributaries, and in which order they are entitled to divert and use the said water shall be and is according to the date of the relative priority of the rights as herein set forth and determined, and the first in order of time according to the date of relative priority shall be and is the first in order of time, and so on down to the date of the latest right, and those having prior rights are entitled to divert and use the waters of said stream and its tributaries when necessary for beneficial use in connection with the irrigation of their respective lands or other useful and beneficial purposes for which they are decreed the right of use, at all times against those having subsequent rights without let or hindrance, and whenever the water is not required by the appropriator having a prior right to its use for the purpose for which said water was appropriated, he must and shall permit it to flow down the natural channel of the stream as it was wont to flow in its natural course without hindrance or diversion thereof, and those having subsequent rights are entitled to the use of such water and to divert the same to the extent of their rights of appropriation according to the order of priority of their rights; and at all times the waters shall be beneficially, economically and reasonably used without waste by those having a right to the use of such water, and no rights of appropriation are hereby confirmed to divert a greater quantity of water than such appropriator can beneficially use for the purpose to which the water is to be put.

That each and every appropriator holding a permit or permits covering the right to appropriate water from said Three Mile (or Holman) Creek, or its tributaries, whether a claim thereunder was filed in this proceeding or not, shall have such water rights thereunder as are provided by law, and the rights of such parties shall be completed and established in the manner provided by law for the completion of such rights. That the rights of each and every appropriator holding a water right certificate of certificates covering a right to appropriate water from said Three Mile (or Holman) Creek

or its tributaries, whether a claim thereunder was filed in this proceeding or not, shall be as defined and limited in such certificates, except where such rights have been abandoned subsequent to the issuance of the certificate.

19.

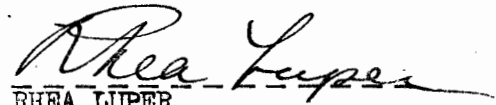
That except as otherwise modified herein, the rights of the various appropriators of water from Three Mile (or Holman) Creek and its tributaries, arranged in a tabulated form, with the dates of relative priority of such appropriations, the number of acres to which such appropriations are applied and are now limited, the use or uses to which said water is applied, the name of the ditch or other means by which the water so appropriated has been diverted, the name of the stream or other source from which the water has been used, and the description of the lands upon which the water has been used, the tabulated rights of each appropriator being set opposite and following his name and post office address, are as follows, to-wit:

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
1982 Anderson, Alfred E., Route 1, The Dalles, Ore. (Proof No. 1)	1885			Domestic and stock		Three Mile Creek	The water for stock and domestic purposes is used in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 1 N. R. 13 E. W. M.
1984 Bell, C. W., Route 1, The Dalles, Ore. (Proof No. 2)	1868		6	Irrigation and stock	Bell Ditch	Three Mile Creek	2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 4 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33, T. 1 N. R. 13 E. W. M.
Cyphers, F. C., Motor Route A., The Dalles, Ore. (Proof No. 3)	July 14 1917						(Rights acquired under State Engineer's Permit No. 3452, Certificate No. 3495.)
1986 Fuller, Mrs. Nettie, Motor Route A., The Dalles, Ore. (Proof No. 4)	1906		$\frac{1}{4}$	Irrigation, domestic and stock	Pipe line	Three Mile Creek and spring on land	$\frac{1}{4}$ acre in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T. 1 N. R. 13 E. W. M.
1988 Fuller, Geo. N., Motor Route A., The Dalles, Ore. (Proof No. 5) (See Paragraph 11, page 5)	1860 for domestic & stock 1908 for irrigation		0.25	Irrigation, domestic and stock	Pump and pipe system	Three Mile Creek & spring	0.25 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T. 1 N. R. 13 E. W. M.
1987 Canceled Sp.Or.Rec.Vol. <u>46</u> p. <u>181</u> Kaufman, Adam, R.F.D. #1, The Dalles, Ore. (Proof No. 6)	1908		$\frac{1}{4}$	Irrigation, domestic and stock	Pipe line	Springs	$\frac{1}{4}$ acre in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T. 1 N. R. 13 E. W. M.
1988 Mayfield, Ferris, 616 E. 2nd St., The Dalles, Ore. (Proof No. 7)	1870			Domestic and stock	Pipe line	Spring	Place of use and location NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T. 1 N. R. 13 E. W. M.
Oprist, Sarah M., Route 1, The Dalles, Ore. (Proof No. 8) (See Paragraph 10, page 5)							(Rights acquired under State Engineer's Permit No. 6227.)
1989 Pease, Edward C., Trustee, The Dalles, Ore. (Proof No. 9)	1880		15	Irrigation, Domestic and Stock	Pipe line and natural channel	8 springs on land	2.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 2.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.0 acre in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 10.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T. 1 N. R. 13 E. W. M.

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
1990 Pick, Wm. R.F.D. #1, The Dalles, Ore. (Proof No. 10)	1890		3.2	Irrigation, Domestic and stock	Old Ditch	Three Mile Creek	3.1 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33, 0.1 acre in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T. 1 N. R. 13 E. W. M.
1991 Rawson, W. W., Route 1, The Dalles, Ore. (Proof No. 11)	Riparian			Stock and domestic	Direct from creek	Three Mile Creek	Described as being 27 rods south, and 120 rods west of the NE corner of Section 22, but a part also being in S $\frac{1}{2}$ of SE $\frac{1}{4}$, Section 15, to the north.
1992 Saunders, G. E., Route #1, The Dalles, Ore. (Proof No. 12)	1893		3.5	Irrigation, domestic and stock	Pump	Three Mile Creek	0.6 acre in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 1 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.9 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, T. 1 N. R. 13 E. W. M.

And the State Engineer of Oregon, being fully advised in the premises, it is hereby considered and ordered, that the relative rights of the various claimants to the use of the waters of Three Mile (or Holman) Creek and its tributaries, be, and the same are hereby adjudicated, determined and settled as set forth in the foregoing findings and order of determination.

Dated this 20th day of July, 1927, at Salem, Oregon.


RHEA LUPER
State Engineer.